REQUEST FOR TRANSCRIPT.

Filed June 5, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, BROWNSVILLE DIVISION.

IN THE MATTER OF:

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NUMBER ONE.

BKCY. No. 520.

To the Honorable L. C. Masterson, Clerk of said Court:

Now comes Cameron County Water Improvement District No. One, Appellant in the above numbered and styled cause and requests the Clerk to prepare a Transcript for appeal and place in said Transcript the following:

1. Applicant's Second Amended Original Petition.
2. Contestant's Motion to Dismiss and Contest the same.
3. Judgment of the Court.
4. Opinion of the Court.
5. Motion for New Trial.
6. Petition for Appeal.
7. Assignments of Error.
8. Order allowing Appeal.
9. Appeal Bond.
10. Waiver of Notice of Citation of Appeal.
11. Final Certificate.

Cameron County Water Improvement District No. One prays that the above be included in said Transcript and files this its request in duplicate.

CAMERON COUNTY WATER
IMPROVEMENT DISTRICT
NUMBER ONE,
By W. B. LEWIS,
Attorney for Appellant.

CONTESTANTS' REQUEST FOR ADDITIONAL PARTS OF THE RECORD TO BE INCLUDED IN TRANSCRIPT.

Filed June 11, 1935.

Houston, June 8, 1935.

G-10298.

Re: Cameron County Water Improvement District No. One—Bankruptcy No. 520.

Mr. F. A. Hinojosa, Clerk,
United States District Court,
Brownsville, Texas.

Dear Sir:

Supplementing Mr. W. B. Lewis' letter to you of June 1, 1935, we request that in addition to the documents requested by Mr. Lewis you kindly include the following in the transcript being prepared in the above styled matter:

(1) First Amended Petition of Applicants.

(2) Order of Court dated August 22, 1934, approving filing of above mentioned petition.

(3) Contestants' application to intervene and order granting contestants leave to intervene dated October 5, 1934.

We are making this request in behalf of all of the contestants.

Thanking you for your courtesy, we remain

Very truly yours,

BAKER, BOTTS, ANDREWS & WHARTON.

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4 CAPTION.

In the District Court of the United States for the Southern District of Texas, Brownsville Division.

In the Matter of:

Cameron County Water Improvement District Number One.

No. 520 In Bankruptcy.

BE IT REMEMBERED, that in the above entitled and numbered cause, pending in said Court, in which an Order of Dismissal was filed and entered on December 11, 1934, the Honorable Thomas M. Kennerly, Judge of the District Court of the United States for the Southern District of Texas, presiding, the following proceedings were had and taken in said Court, to-wit:

5 FIRST AMENDED PETITION.

Filed Aug. 22, 1934.

To the Honorable T. M. Kennerly, Judge of the District Court of the United States for the Southern District of Texas, Brownsville Division.

The Petition of Cameron County Water Improvement District Number One of Harlingen, Cameron County, Texas.

6 I.

Comes now Cameron County Water Improvement District Number One of Harlingen, Cameron County,

Texas, and respectfully represents to this Honorable Court that its principal place of business is in Harlingen, Cameron County, Texas, and this has been its principal place of business for the last six months next immediately preceding the filing of this Petition, and that it resides wholly within the Southern District of Texas and wholly within the Brownsville Division of said District.

Your petitioner would represent that it is a Water Improvement District which is an irrigation district, and is a municipality and a political subdivision of this State, as the same is defined by Public Bill Number 251 of the 73rd Congress, being H. R. 5950, and being approved on May 24th, 1934, at 12:20 P. M., and being in full force and effect now, and being in full force and effect since May 24th, 1934.

II.

Your petitioner would represent to this Court that it is an irrigation district and has been in operation for something like twenty years, supplying water to the farmers and aiding and encouraging agriculture; making it possible for the farmers to irrigate their land and produce fruits and vegetables; and said district has within its borders approximately 42,000 acres of land, all of which are wholly located within the boundaries of Cameron County, Texas.

III.

That about two and a half years ago the country entered into a general financial depression causing great reduction in the price which the farmers received for their fruits and vegetables; the price being placed

at such a low basis that even it did not pay the cost of production, thereby making it impossible for the farmers of said district to pay their Flat Rates and bond tax; and created a condition as described fully in Section 80, Chapter LX of said House
7 Bill Number 5950, mentioned above, and did create such a condition that this petitioner is insolvent and is unable to meet its debts as they mature, and that this District desires to effect a plan of re-adjustment of its debts as provided by Section 80 above described.

IV.

That when the condition arose as described in Paragraph III of this petition, your petitioner had outstanding bonds to the amount of approximately $800,000.00. That part of said bonds are known and described as Cameron County Irrigation District Number One Bonds, and the balance of said bonds are described as Cameron County Water Improvement District Number One Bonds, but all of said bonds are the bonds and obligations of the district; and the reason of the different names on said bonds is because the Legislature changed the name "Irrigation Districts" to "Water Improvement District," and the Irrigation District Bonds were issued before the name was changed, and the Water Improvement District Bonds afterwards.

That all of said Bonds above described bore interest at the rate of six (6%) percent and the bonds were maturing serially, which made an annual obligation against this district under the present financial conditions of the farmer, which caused this district to be unable to pay its maturing indebtedness; and brings

this district strictly within the provisions of Section 80, above described.

V.

That your petitioner realizing its inability to meet its debts, as mentioned in Paragraph IV of this petition, began to work out some kind of a plan to adjust the same, which would be fair and equitable both to the District and to the bond owners and holders of said District; and they applied to the Reconstruction Finance Corporation at Washington, D. C., for a loan to liquidate said indebtedness, and after said loan was filed with the said Reconstruction Finance Corporation they sent inspectors and appraisers from Washington, D. C., and they duly inspected said property and appraised the same, and took
8 into consideration the rights of the farmers and the District and the bond holders. They decided that a fair proposition to all concerned would be to pay the bond holders 49.8 cents upon each dollar of principal, which the Reconstruction Finance Corporation agreed to furnish and agreed to loan to the District at four (4%) percent instead of six (6%) percent; said proposition being absolutely satisfactory to Cameron County Water Improvement District Number One, your petitioner herein.

VI.

That afterwards, to-wit, on the 13th day of January, 1934, the Reconstruction Finance Corporation authorized a loan to this District for $400,000.00 for the purpose of refunding the bonds of said District at 49.8 cents on the dollar, which said authorization would enable your Petitioner to reduce its bond taxes at least two-thirds and would make the District financially sound, and after receiving said authoriza-

tion, your Petitioner mailed a letter to all known bond holders which is as follows:

9 Cameron County Water Improvement
District Number One.

Directors—H. L. Starnes, J. S. Blakeney, F. H. Green, J. W. Wade, W. P. Bush.

Officers—H. L. Starnes, Manager; F. H. Green, President; J. S. Blakeney, Vice-President; J. W. Wade, Secretary; W. H. Maupin, Assessor & Collector.

Address all Communications to the District.

Harlingen, Texas, February 9th, 1934.

Bondholders of Cameron County Water Improvement District Number One; or Cameron County Irrigation District Number One.

Gentlemen:

We are pleased to report that on the 13th day of January, 1934, the Reconstruction Finance Corporation authorized a loan of $400,000.00 to refund the bonds of the District at 49.8 cents upon each dollar of the principal, provided the bonds are sent in on this the first call. If the bonds are sent in upon the second call 47.8 cents upon each dollar of the principal All past due interest coupons must be attached but if the coupon maturing October 1st, 1933, be detached the Government will reduce the amount of the payment 49.8% of such coupons. Should any coupon maturing after October 1st, 1933, be detached, the Government will reject the bond entirely. Your prompt response will make you $20.00 per bond.

You will sign the enclosed Power-of-Attorney and send the same, together with your bonds, to the First National Bank of Harlingen, Texas, the depository of

the District, which has been designated as a proper agent to present the bonds to the Federal Reserve Bank at San Antonio, Texas, the place designated for final payment, from which bank remittance will be made direct to you. If you prefer to have some other bank, you will fill in its name in lieu of our bank, but have your bank notify us and the Reconstruction Finance Corporation the date, amount and principal of bonds you have deposited. The Government will then have your bank send the bonds direct to the Federal Reserve for final payment as soon as a sufficient amount has been deposited. No payment will be made until the amount named by the Reconstruction Finance Corporation has been assembled.

We believe this refunding will be a benefit to you because prior to the refunding order our bonds could be purchased in the open market for 35 cents on the dollar and less. You get 49.8 cents, with which funds you can buy other bonds of equal or superior quality, and we would be glad to assist you in such purchase. Since filing our application with the Reconstruction Finance Corporation for refunding under the Emergency Farm Mortgage Act, this section was visited by a tropical hurricane of over 100 miles velocity and torrential rains, which destroyed the fruits and vegetables of the Valley and did property damage of over $50,000,000. Notwithstanding this gigantic loss, the Government is willing to pay you 49.8 cents on the dollar for your bonds.

Please act promptly.

Sincerely yours,

CAMERON COUNTY WATER
IMPROVEMENT DISTRICT
NUMBER ONE,
H. L. STARNES, Mrg.

10 and accompanying said letter, your petitioner enclosed a power of attorney which is hereto attached, and said power of attorney being mailed to various dealers in bonds.

11 Power of Attorney.

Whereas, the Reconstruction Finance Corporation of Washington, D. C., did, on the thirteenth day of January, 1934, pass an order to refund the outstanding bonded indebtedness of Cameron County Water Improvement District Number One, which indebtedness includes the outstanding bonds issued by Cameron County Water Improvement District Number One, and/or Cameron County Irrigation District Number One, Harlingen, Texas. . . .

Whereas, said bonds must be assembled so they can be presented to the Federal Reserve Bank in San Antonio, Tex., designated by the Reconstruction Finance Corporation as the place of final payment, and,

Whereas, the order further provides that the Reconstruction Finance Corporation will pay 49.8 cents for each dollar of the principal of the bonds deposited, on this call—which must be done promptly, all bonds shall be accompanied by All Unpaid Interest Coupons, and further provides that said Corporation shall pay 47.8 cents on each dollar for the bonds which are subsequently deposited after the time fixed by the Division Chief, and said bonds must also be accompanied by all unpaid interest coupons.

Therefore, I, the undersigned, the owner of the following bonds:

Bond No. .....
Maturity Date .....
Amount of Bond .....
All Coupons attached Due Oct. 1st, 1933, and After
.....

do hereby deposit the same with the First National Bank of Harlingen, Texas or * ..... at ..... and I hereby authorize said Bank to act as my special agent and deliver the bonds and all attached interest coupons to the Federal Reserve Bank at San Antonio, Texas, under the terms of said order of the Reconstruction Finance Corporation, and to collect from said Federal Reserve Bank the amount provided in said order as mentioned above, and to remit to me the proceeds of same, and I hereby give said Bank all authority that I would have, provided I were there in person, in regard to the exchange of said bonds and the refunding of same.

Witness my hand this ..... day of February, A. D. 1934.

.....

Witnesses:

.....

.....

* Note: Write in the bank of your choice. Notify the District and the R. F. C. that the bonds are deposited and the amount thereof.

12 VII.

That your petitioner has fully complied with Section 80 of House Bill 5950 in that it has secured more than thirty (30%) per cent of all the bond holders of said District, and they have signed said Power of Attorney, and placed the same with the First National Bank of Harlingen, Texas, and with the Federal Reserve Bank of San Antonio, Texas, and with other banks; and your petitioner alleges that more than thirty (30%) percent of the bond holders have accepted the plan of financing and have signed up on the same, but your

petitioner alleges that the bonds are payable to bearer but your petitioner does not know their names or addresses; that it has diligently searched for more than four months and tried to ascertain who they are; that there are no bond owners known to your petitioner who have refused said plan of settlement, but all of them in so far as petitioner knows are willing to comply with said plan of settlement, agree to same, and believes that said plan of settlement would be advantageous to them. Your petitioner alleges that it believes that if this Honorable Court would issue a Notice as required by Subdivision C of Section 80, giving three weeks successive publication of this plan, and have a hearing set upon same within approximately thirty (30) days, and have said Notice published in the "Bond Buyer," that practically all of the owners of said bonds would see the same and would come in and agree to said plan of adjustment.

VIII.

Your petitioner says that it will be able to secure an approval of more than sixty-six and 2/3rd (66-2/3) percent of all of the bonds at a hearing as provided for in Subdivision D of said Section 80.

IX.

Your petitioner alleges that the plan of re-adjustment has been prepared as fully set out in the letter and in the Power of Attorney, which are attached to this petition, and are filed herewith with said
13 petition; and your petitioner further alleges that more than thirty (30) percent of the owners of said bonds have signed and accepted said plan of adjustment as provided in Subdivision A of Section 80 of said Bill.

X.

Your petitioner further alleges that it attaches hereto copies of the Original Order from the Reconstruction Finance Corporation authorizing the appropriation of funds to care for and pay off and refund the bonds heretofore mentioned in this petition, as follows:

Form 1/5-34. Meeting of
Reconstruction Finance Corporation.

Resolution.

Re: Cameron County Water Improvement District Number One.

Docket Ref. No. 7.

Whereas, Cameron County Water Improvement District Number One, of Cameron County, of Harlingen, Texas, a political subdivision duly organized under the laws of the State of Texas (herein called the "District"), has applied to this Corporation for a loan to enable it to reduce and refinance its outstanding indebtedness, pursuant to the provisions of Section 36, Part 4, of the Emergency Farm Mortgage Act of 1933, as amended, and

Whereas, the District has represented that prior to May 12, 1933, it had completed a project devoted chiefly to the improvement of lands for agricultural purposes and that in connection with such project it had incurred and now has outstanding indebtedness approximately the following amounts:

Nature of Debt.—Bonds.
Principal Amount—$802,000.00.
Interest unpaid on ....., 193.., ...
Total Outstanding—$802,000.00.

Such indebtedness, together with all interest accrued and unpaid thereon as of October 1, 1933, is hereinafter referred to as the "Existing Debt" and the bonds and coupons or other instruments evidencing such debt are hereinafter referred to as the "Old Securities"; and

Whereas, this Corporation has caused an appraisal to be made of the property securing or underlying the Old Securities and has determined that the project of the District is economically sound, and now desires to make a loan to enable said District to reduce and refinance all or by far the greater part of such existing debt on the basis of payments to holders of its Old Securities, or to Committees or other representatives of such holders, at the rates herein set forth,

14 Now, Therefore, Be It Resolved, that there is hereby authorized a loan of not exceeding $402,500.00, to or for the benefit of said District, subject, however, to the following terms and conditions:

1. Time Limits: All loans hereunder shall be disbursed before the expiration of the time within which this Corporation is or shall hereafter be authorized by law to make such loans, but the Chief or Acting Chief of the Drainage, Levee and Irrigation Division (hereinafter referred to as the "Division Chief") may fix any shorter time within which such loans must be disbursed and may from time to time extend any dates so fixed by him.

2. Deposit of Old Securities: The holders of Old Securities who join in this plan of refinancing shall deposit the same with one or more committees, depositories, or other responsible representatives satisfactory to them which shall consent to the plan of refinancing contemplated by this resolution (hereinafter referred to as "Owners' Agents") or shall other-

wise give this Corporation satisfactory assurance that the Old Securities held by them will be subjected to such plan, in which latter case they are hereinafter referred to as "Consenting Owners." Old Securities deposited with Owners' Agents or held by consenting owners are hereinafter referred to as "Deposited Securities." Each Owners' Agent shall be duly authorized to receive all moneys payable to the holders of Old Securities deposited with it, to surrender the Deposited Securities and do all other acts and things necessary to enable the District to effect a reduction in its indebtedness to the extent that in the manner contemplated by this resolution.

No loan shall be made hereunder (a) unless all of the old Securities shall be thus deposited or (b) unless the Division Chief shall deem that such a large proportion of such securities has been deposited as will satisfactorily accomplish the purpose of this Corporation in authorizing this loan. In this latter event, as hereinafter more fully provided, lesser amounts may be payable on the Deposited Securities than in case all of the old Securities are deposited.

3. Payments on Deposited Securities: The amounts to be loaned by this Corporation hereunder shall be sufficient to provide for payments of different amounts of money on account of the Deposited Securities as follows:

(a) 49.8 cents for each dollar of principal amount of the Deposited Securities, provided that all of the Old Securities shall have been deposited at the time when this Corporation makes its first loan hereunder.

(b) 49.8 cents for each dollar principal amount of such Deposited Securities, in case the District is unable to procure the deposit of all of such Old Securities but shall procure the deposit of such larger

proportion thereof as shall be required or approved by the Division Chief.

(c) 47.8 cents for each dollar principal amount of Old Securities that are not thus deposited at the time when the first loan is made pursuant to the provisions of sub-paragraph (b) of this section, but which are subsequently deposited within such time or times as may be fixed or approved by the Division Chief.

Each Deposited Security shall be accompanied by such of its appurtenant coupons, if any, representing interest accrued on or before October 1, 1933, as may be required by the Division Chief and shall
15 also be accompanied by all coupons representing interest payable thereon after such date. In case any such security shall not be accompanied by any coupons required by the Division Chief representing interest accrued on or before the aforesaid date, the amount payable thereon shall be reduced in such amount as may be determined by the Division Chief, but such reduction shall not be less than 49.8 cents for each dollar of the face amount of such missing coupons. In any case any Old Securities shall be presented with any missing coupons that mature after the aforesaid date the Division Chief may refuse to accept the same, or if such securities are accepted there shall be deducted from the amount paid on account thereof a sum equal to the full face amount of such missing coupons.

In case any Old Securities shall be deposited without being accompanied by all the required coupons and if because of such missing coupons reductions are made in the amounts payable on account of such Old Security, but thereafter such missing coupons are deposited within such time or times as may be presscribed or approved by the Division Chief, there shall be paid on account of such coupons subsequently deposited

amounts exactly equal to the sums which were originally deducted from the sum paid on account of such Old Security to which such coupons appertained.

4. Disposition of Balance: Any balance of the loan hereby authorized that is not required for making such payments as aforesaid on account of Deposited Securities may be applied in the sole discretion of and as may be approved by the Division Chief to either of the following purposes:

(a) To the payment of such persons as the Division Chief may designate of costs incurred in connection with this refinancing for fees or municipal bond counsel, printing and issuing of new bonds, or appraisal of the lands within the District, but only in such amounts as may be approved by the Division Chief.

(b) To payment of any sums that it may prove advisable to advance in order to avoid the necessity for issuance of any New Bonds having a principal amount of less than $1,000.00.

In addition to the maximum amount of the loan authorized above, the Treasurer of the Corporation is also authorized to advance such sums or as may be approved by the Division Chief for payment of any interest accrued for the then current interest period on any bonds or securities acquired by this Corporation and any other sum required for interest adjustments.

5. How loans are to be Effected: Unless the Division Chief shall direct otherwise, loans made hereunder shall be conditioned upon the authorization by the District of new 4% bonds (herein referred to as "New bonds") having a principal amount sufficient in the option of said Division Chief and Counsel for this Corporation to insure completion of the proposed refinancing. Such loans shall be effected in any of the follow-

ing ways as said Division Chief and Counsel shall direct:

(a) If the Division Chief shall deem it advisable to have the Deposited Securities canceled immediately upon issuance of the New Bonds, such loans may be advanced directly to the District or to the Owners' Agents and consenting owners at the time of the surrender and cancellation of the Deposited Securities but only upon receipt by this Corporation of New Bonds having a principal amount equal to the amount of the loans it has made thereunder.

(b) In the event that the Division Chief shall deem it necessary to keep any or all of the Deposited Securities alive for a greater or lesser length of time in order to maintain a parity of rights as between the holder of the Deposited Securities (Old) who
16 did not deposit same, or for any other purpose, then such loans may be made directly to the Owners' Agents and consenting owners. All such loans shall be represented by the notes of such consenting owners or agents, and the Deposited Securities shall be pledged as security therefor. When executed by Owners' Agents, such notes may provide that the maker thereof shall not be individually liable thereon. Each such note shall give this Corporation authority at any time to surrender all or any part of the pledged securities to the District in exchange for New Bonds and shall also authorize this Corporation, upon first having requested payments of such notes and payment having been refused, to purchase the pledged securities at such sale as may be provided for by such note.

Each such note shall bear interest at the rate of 4% per annum, payable as nearly as practicable on the interest payment dates borne by the major part of the Deposited Securities. The District shall not be a party

to such note but in case it shall pay the interest thereon promptly when and as the same falls due, the Corporation will accept such interest payments and will thereupon give credit to the District for payment of the interest for such period on all the Deposited Securities at that time held by this Corporation, it being expressly provided, however, that nothing contained in this resolution shall be deemed to limit the right of this Corporation to enforce full payment of interest or principal on Deposited Securities it may hold, at any time when it may deem it advisable to do so in order to protect its rights as holder of the Deposited Securities against any rights claimed by the holders of Old Securities that have not been deposited.

As a condition precedent to the making of any such loan, in the manner provided in this sub-paragraph, the Division Chief and Counsel for this Corporation may require the District to execute or agree to execute such amount of its New 4% Bonds as they may specify and when executed, to deliver such bonds to a trustee or custodian satisfactory to this corporation. Such trustee or other custodian shall be irrevocably bound to exchange such New Bonds for the Deposited Securities held by this Corporation at any time when it shall so request, but the New Bonds thus to be delivered to this Corporation shall not exceed in principal amount the sum then owed to this Corporation on account of the advances which it has made hereunder, together with any interest then accrued and unpaid thereon.

(c) In the event that Counsel for this Corporation shall have any doubt as to the legal authority of the District to issue New Bonds in exchange for some part or some class of the Deposited Securities, provision shall be made for delivery to this Corporation of New Bonds having a principal amount equal to the same owed to this Corporation on account of the

advances it has made or is thus making hereunder, upon the surrender and cancellation of only such part of the Deposited Securities as such counsel deems the District can lawfully accept in exchange for New Bonds. Promptly after effecting any such exchange of a part of the Deposited Securities for New Bonds, the Treasurer of this Corporation shall surrender or assign to the District without charge all of the Deposited Securities then held by this Corporation that were not previously exchanged for New Bonds.

6. Municipal Bond Counsel. In cases where New Bonds are to be issued, the District at its own expense shall employ nationally recognized municipal bond counsel satisfactory to and approved in writing by counsel for this Corporation and shall cause such bond counsel to prepare resolutions and proceedings authorizing an issue of New Bonds necessary for the purpose of the proposed refinancing. Such resolution and bonds shall comply in all respects with the provisions of Section 36, Part 4, of the Economy Farm Mortgage Act of 1933, as amended. Such counsel shall submit drafts of such resolutions and proceedings to Counsel for this Corporation and secure their approval thereof before their adoption and upon the delivery of such New Bonds shall give this Corporation such satisfactory preliminary and final opinions as to the validity thereof and the security therefor as counsel for this Corporation may require.

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The District shall also furnish, at its own expense, such opinion or opinions of municipal bound counsel as may be required by and be satisfactory to Counsel for this Corporation with respect to the validity of and security for any Old Securities pledged as collateral for notes taken by this Corporation or otherwise acquired by it.

7. Date, Maturities and Interest of New Bonds. Such New Bonds shall bear such date as shall be satisfactory to Counsel for this Corporation. No part of the principal thereof shall mature during the first three (3) years after their date and such bonds shall mature thereafter in annual installments over a period of Thirty (30) years, commencing at the end of the fourth (4) year from the date they bear according to a maturity schedule satisfactory to the Division Chief. If the District may legally do so, such annual maturities, so far as practicable, shall be such that the totals of the sums payable for interest and for the retirement of bonds shall be approximately the same in each year during which there is a maturity. Interest on New Bonds is to be paid semi-annually unless the Division Chief shall otherwise direct.

8. Covenants of the District. No loan shall be made upon the terms of this resolution until after the District shall have adopted resolutions or otherwise have entered into satisfactory agreements providing that so long as any of the New Bonds or any of the Old Securities pledged with or acquired by this Corporation remain outstanding.

(a) Statutory Covenants: The District will not issue any other bonds having security similar to that of the New Bonds or of the Old Securities pledged with or acquired by this Corporation except with the consent of this Corporation; that in so far as it lawfully may, the District will pay to this Corporation an amount equal to the amount by which the assessments, taxes, or other charges collected by the District, exceed the costs of operation and maintenance of the project and maturities of interest and principal on its outstanding obligations, and that the District will reduce, in so far as it lawfully may, the annual taxes, assessments and other charges imposed by it for or on account of the project by an amount proportional to

the reduction in the corresponding annual requirements for principal and interest of its outstanding indebtedness by reason of the operation of Section 36, Part 4, of the Emergency Farm Mortgage Act of 1933, as amended.

(b) Cash Operating Basis: In the period prior to the first maturity on such New Bonds, or in case no New Bonds shall be issued, then in the period of three years after the first loan shall be made hereunder (or such longer period as may be fixed by the Division Chief) the District will cause to be levied and collected sufficient assessments, taxes, or other charges to pay all of its operating costs for such period, all tax anticipation obligations of every kind which it then has outstanding and all other indebtedness of the District which is then due and payable or becomes due and payable during such period (excepting only obligation on Old Securities which are then pledged to or held by this Corporation) and in addition thereto, to leave the District at the end of such period with sufficient cash on hand to pay all obligations which it should meet before the time when its next assessment or taxes become payable to the end that after the expiration of such period the District will be operated on a cash basis with no tax anticipation warrants, notes or other like obligations then outstanding. After the date when the first loan is made hereunder, the District will not incur any indebtedness of any kind unless it can pay such indebtedness at the
18 time due from cash on hand or which it will have on hand at such time from its normal source or revenue and it will not issue any tax anticipation warrants, notes or other obligations of any kind without first securing the written consent of this corporation.

(c) Notice of Meetings: The District will give this Corporation ample notice of any meeting of its

governing body at which any matters of importance are to be acted upon, accompanied by a brief statement of the nature of the matters to be considered at such meeting, and this Corporation shall have the right to have such meetings attended by any authorized representative.

(d) Physical Conditions: At the end of each six months' period the District will furnish this Corporation with a statement as to the physical condition of all properties owned or maintained by the District, which statement shall be signed by two of its executive officers and by the District Engineer, if it has such an employee.

(e) Annual Budget-Reserve for Interest: In each year the District will prepare an estimate of the amounts which it will be required to pay out during each months of the following year, a statement of the cash it then has on hand, and an estimate of the cash it will receive during each month of the next year. Such estimates, particularly during the earlier years, shall provide for building up such suitable reserve as may be required by this Corporation for payments of principal and interest in bad years. Such estimates shall be submitted to this Corporation within 60 days prior to the date when the rate or rates of assessments are fixed in each year and the District agrees that in levying taxes or assessments for the following year, it will comply with all reasonable suggestions or requests made to it by this Corporation in connection therewith.

(f) Report on Assessments Levied: Promptly after the levy of any assessments or taxes, this District will notify this Corporation of the amounts of such taxes or assessments, showing separately the amounts levied for each of its funds.

(g) Annual Reports: Promptly upon the making of any audit of the business of the District any year pursuant to the terms of any statute, rule or regulation applicable to such District, it will furnish this Corporation with true copies of such audit reports.

In the event that such reports shall fail to show all receipts and disbursements of the District for the preceding year, including a separate statement of all sales of lands owned by the District, the District will, within 30 days after the close of each of its fiscal years, furnish the Corporation true and accurate reports thereof. The District will also furnish this Corporation with all such other reports, as it may from time to time request in writing.

Within 30 days after the close of each of its fiscal years, the District will also give the Corporation a statement giving the name of each land owner within the District who has failed to pay any District Taxes or assessments payable within the prior year, a brief description of the land subject to such taxes or assessments and a brief statement of what steps have been taken by the District or others to enforce collection thereof.

(h) Attorney for District: In the event that the Corporation shall so request, the District at its own expense will engage any responsible attorney or attorneys designated by this Corporation and shall confer upon such attorneys full power and authority to enforce collections of any delinquent taxes or for any other purpose.

19 (i) Litigation: The District shall promptly notify this Corporation of any suit or litigation which may be instituted against it.

(j) Access to Records: The District will at all times give the Corporation full access to and copies of

all records, reports and files of the District and its governing authority.

(k) Successor: All resolutions and agreements by the District shall provide that any consents that may be given by and any rights thereby conferred upon this Corporation may be exercised by any successor to this Corporation designated by Acts of Congress or by any Department of the United States Government or any corporation wholly owned by it, or by any person holding responsible office under the United States Government that may at any time be designated for that purpose by this Corporation.

9. Other Conditions Precedent: This Corporation shall be under no obligations to make any loans pursuant to this resolution unless and until the following conditions have been complied with to the satisfaction of the Division Chief:

(a) Reassessments: Unless the District shall have complied to the satisfaction of the Division Chief with any requirements he may impose for reassessment of the benefits upon the lands within such District and with any requirements that the Division Chief may impose in connection with the adjustment or collection of taxes or assessments that are now delinquent.

(b) Exclusion of Lands: Unless the District shall have complied to the satisfaction of the Division Chief with any requirement he may impose for the exclusion of lands from the District which he deems unproductive or for the other reasons considered should not be included in the District.

(c) Disbursement of Monies—Committee Expenses: Unless the Division Chief is satisfied that the monies to be loaned will be equitably distributed to and among

the owners of the Deposited Securities, in portion to the loan value of the securities they have respectively deposited, the Owners' Agents shall submit to the Division Chief such statements of their expenses and of the compensation which they propose to pay to depositories, committee members and others, as he may require. If the Division Chief shall notify such Agents in writing that he disapproves of any such expenditures and if such Agents fail to procure such reductions in said charges as he may require, the aforesaid loan shall not be consummated.

(d) Legal Proceedings: Unless Counsel for this Corporation and the Division Chief shall be satisfied with all resolutions and proceedings incidental to the authorization and issue of any New Bonds and the Deposited Securities, with the security therefor and with all proceedings connected with the acquisition of such obligations by this Corporation the pledging of Deposited Securities to this Corporation, the Exchange of New Bonds therefor and the cancellation of Old Securities.

(e) Representations: If any representation or statement made to this Corporation in the application for this loan or any supplement or amendment thereof, or otherwise, shall be found to be incorrect or incomplete in any material respect.

(f) Financial Physical Condition: If, in the judgment of the Division Chief, there shall have been any material change in the financial condition of the District or in the physical condition of its properties as theretofore represented to this Corporation.

(g) Opinion of Counsel: Unless Counsel for this Corporation shall be satisfied with all opinions rendered by municipal bond counsel as to the validity of and security for, the Deposited Security and the New Bonds.

(h) Satisfactory Performances: Unless all terms and conditions of this resolution and of Section 36, Part 4, of the Emergency Farm Mortgage Act of 1933; as amended, shall have been complied with to the satisfaction of the Division Chief and of Counsel for this Corporation.

Further Resolved, that if the Division Chief shall so request, counsel for the Corporation shall prepare any contracts or agreements not inconsistent with this Resolution, setting forth the terms and conditions under which the aforesaid loans, advances or exchange are to be effected and when any such contracts or agreements shall have been approved by the Division Chief, and by Counsel designated for that purpose by the General Counsel for this Corporation, the Treasurer of this Corporation is authorized and directed to execute the same and in the name and on behalf of this Corporation.

Further Resolved, that when said District, Owners' Agents and consenting Owners have complied with the provisions, terms and conditions of these Resolutions and of any contracts that may have been executed by the Corporation in this matter to the satisfaction of the Division Chief and of the designated counsel for this Corporation, the Treasurer of this Corporation is authorized and directed to execute all such instruments, make all loans, payments and exchanges of securities and take any other action so approved by the Division Chief and by said Counsel.

Further Resolved, that the Secretary of this Corporation is hereby authorized and directed to forward a certified copy of these resolutions to the District.

I, C. R. Cooksey, Secretary of the Reconstruction Finance Corporation do hereby certify that the foregoing is a true and correct copy of the Resolutions of

its Executive Committee, duly appointed at a meeting thereof regularly convened and held on the 6th day of January, 1914, at which a quorum was present and acting throughout.

In Witness Whereof I have hereunto set my hand and seal of this Corporation this 13th day of January, 1934.

(Signed) "C. R. COOKSEY,"
(Seal) Secretary.

21 (Form—1/22/34.)

Meeting of April 2, 1934.

Certified Copy of Resolution

Adopted by Board of Directors of Cameron County Water Improvement District Number One.

P. O. Address, Harlingen, Texas.

Whereas, the officers of this District have heretofore filed an application with the Reconstruction Finance Corporation asking that a loan be made to or for the benefit of this District for the purpose of enabling it to reduce and refinance certain indebtedness heretofore incurred in connection with its project; and

Whereas, on January 6, 1934, the Reconstruction Finance Corporation authorized a loan of not exceeding $400,000.00 for such purpose subject to the terms and conditions set forth in a resolution adopted by said Reconstruction Finance Corporation on that date; and

Whereas, the Directors of this District have received and examined a certified copy of said resolution and desire to accept the said loan on the terms and conditions therein set forth.

Now, Therefore, be it Resolved, that this—District hereby ratifies and approves the action of its officers in making such application and confirms all statements of fact therein contained and all other facts and representations of fact offered or made by its officers and representatives to the Reconstruction Finance Corporation in support of such application.

Further Resolved, that this District accept such loan and for that purpose hereby assents and agrees to all the terms and conditions of said resolution so adopted by the Reconstruction Finance Corporation and agrees that it will faithfully do and perform all things on its part to be done thereunder.

Further Resolved, that the officers of this District be and they hereby are authorized and directed to do all acts and things necessary, proper or convenient in order to comply with and carry out all of the terms and conditions of said resolution and the Secretary of this District is directed to forward a certified copy of this resolution to the Chief of the Drainage, Levee and Irrigation Division of said Reconstruction Finance Corporation.

The undersigned, being the duly elected Secretary of the aforesaid District, hereby certifies that the foregoing is a true and correct copy of a resolution adopted by its Board of Directors at a meeting thereof duly and lawfully held on the 2nd day of April, 1934, and duly recorded in pp. 69 and 70, Volume 7 of the minutes of Cameron County Water Improvement District Number One.

H. L. STARNES,

(Official Seal) Secretary.

22 XI.

Your petitioner further states to said Court that it has attached hereto more than thirty (30%) percent

of the entire bonds—showing written acceptance and Powers of Attorney, the original of which is attached hereto, and the amount of the same is shown by the Exhibit, but that the same greatly exceed 30%, and that the same does not include all written acceptances, but just those which were within convenient reach of this Court.

XII.

Your petitioner alleges that no fees or compensation or allowance for attorney, agents or committees have been agreed upon or assessed against said District or will be paid out of the revenues received from said funds.

XIII.

Your petitioner alleges that the plan offered the creditors is fair and equitable and for the best interests of the creditors, does not discriminate unfairly in favor of any class of creditors, complies with the provisions of this law and has been accepted and approved by the number of creditors required by law, and that said plan is offered in good faith, and will be a great saving to your petitioner and to its farmers.

XIV.

Your petitioner further alleges that the indebtedness of this District is divided into class, and each class has a different kind of security; that one class might be styled as the employees or workmen necessary to carry on the business of this applicant and supply water to the farmers with efficiency. That this class of people is paid every fifteen days, and would be in no way affected by this petition. That the approximate amount due them is only a small sum since they were paid on

the third Monday in this month, the same being July 16th; and the indebtedness to them is practically nothing. The indebtedness to other parties is as follows:

25 $24,000.00 par value of 7 percent notes, payable serially and payable to bearer, but sold to Brown-Crummer, Wichita, Kansas. These notes are for improvements and are in no way involved in the present refund, and the security is entirely different, they being secured by a transfer of so much Flat Rate annually until the notes are fully paid, and the security is more than ample to take care of and pay the above notes in full.

In addition, the District owes the following notes:

W. H. Maupin, Harlingen, Texas	$2,500.00
Taylor Lumber Company, Harlingen, Texas	1,288.77
Mrs. R. Starnes, Harlingen, Texas	3,306.36
First National Bank, Harlingen, Texas	5,000.00
V. & G. Construction Company, Harlingen, Texas	159.92
A. W. Armstrong, Harlingen, Texas	5,607.46
G. C. Howell, Blue Bonnett Hotel, San Antonio, Texas	10,000.00
R. L. Ware, Harlingen, Texas	12,000.00
Mrs. K. Brown, Brownsville, Texas	18,510.49
Mrs. M. Engelbrecht	1,249.74
A. Foltz, Harlingen, Texas	10,000.00

That all of the above sums were borrowed because of the depression and each one of them is secured differently, and are in a different class from the bond holders,—being secured out of flat rates collected by the District, and since they are amply secured the refunding order in no way effects them.

XV.

In compliance with the provision of the Act above mentioned, which requires the giving of the names and

addresses of all parties who hold bonds who had refused to come in and accept provisions of this settlement, this District respectfully represents to said Court that there are no known bond holders refusing said settlement. There are, however, a few bond holders who have not signed the Power-of-Attorney set forth in this Application, but who say they will do so when they are ready to pay off, and their names and addresses are as follows:

Mid-Continent Life Insurance Company, Oklahoma City, Okla. Approximately	$123,000.00
R. L. Hill, Harlingen, Texas	6,000.00
Dr. J. M. Green, Harlingen, Texas	18,000.00
Green & Stone, San Juan, Texas	3,500.00
Chris Wolz, Harlingen, Texas	1,000.00

That there are the only known bond holders known to the District who hold bonds who have failed
24 to turn in the same and signed the Power-of-Attorney attached hereto. That this District has made diligent search for the owners of the bonds and has advertised for same, but said bonds were sold twenty years ago, were payable to bearer and the names and addresses of the present holders are unknown.

XVI.

That in compliance with said Act, which provides for a list of those who have turned in their bonds and signed the Power-of-Attorney, and agreed to said plan of settlement, we are hereto attaching a list of the names of all of them which are available at this time. However, the District would represent to this Court that said list is considerably more than the 30 percent required by law; and the total amount turned in at other places and direct with the Reconstruction Finance Corporation at Washington, amounts to more than

66-2 3rds percent, and the amount turned in and held by the Banks under the Powers-of-Attorney and the owners and their addresses is hereby given in so far as it is possible to do so, but the same is not a full and complete list, and it is impossible at this time to give a full and complete list:

Number	Holder	Amount
103	Cameron County Water Improvement District Number One, Harlingen, Texas	$1,000
113	D. T. Selby Insurance Company, Oakland, Calif.	1,000
122	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
123	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
124	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
127	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
128	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
129	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
130	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
131	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
132	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000

Number	Holder	Amount
133	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
134	First National Trust & Savings Bank, Santa Barbara, California	1,000
135	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
136	First National Trust & Savings Bank, Santa Barbara, California	1,000
137	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
139	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
141	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
143	Cameron County, Water Improvement District Number One, Harlingen, Texas	1,000
145	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
147	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
150	Blythe & Co., Inc., San Francisco, California	1,000
154	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
156	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
158	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000

Number	Holder	Amount
165	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
167	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
169	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
171	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
172	O. J. Winterman, Eagle Lake, Texas	1,000
173	Fayetteville State Bank, Fayetteville, Texas	1,000
174	O. J. Winterman, Eagle Lake, Texas	1,000
175	Fayetteville State Bank, Fayetteville, Texas	1,000
176	O. J. Winterman, Eagle Lake, Texas	1,000
177	Fayetteville State Bank, Fayetteville, Texas	1,000
178	O. J. Winterman, Eagle Lake, Texas	1,000
181	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
183	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
246	O. J. Winterman, Eagle Lake, Texas	1,000
247	Realty Acceptance Corporation, Harlingen, Texas	1,000
248	Henry H. Tracy (address unknown)	1,000
249	Realty Acceptance Corporation, Harlingen, Texas	1,000
250	O. J. Winterman, Eagle Lake, Texas	1,000
251	Realty Acceptance Corporation, Harlingen, Texas	1,000
252	Union National Bank, Wichita, Kansas	1,000

Number	Holder	Amount
253	Realty Acceptance Corporation, Harlingen, Texas	1,000
254	Concho County, San Angelo, Texas	1,000
255	First National Bank, Harlingen, Texas	1,000
257	Realty Acceptance Corporation, Harlingen, Texas	1,000
258	Concho County, San Angelo, Texas	1,000
261	Concho County, San Angelo, Texas	1,000
262	American General Insurance Company, Houston, Texas	1,000
263	American General Insurance Company, Houston, Texas	1,000
264	American General Insurance Company, Houston, Texas	1,000
265	Avery Fuller Childrens Center, c/o J. J. Meigs & Co., San Francisco, California	1,000
272	J. O. Murph, Harlingen, Texas	1,000
276	E. E. Hagerman, Livermore, California	1,000
281	F. F. Favour, Oshkosh, Wisconsin	1,000
283	First National Bank, Harlingen, Texas	1,000
287	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
289	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
296	First National Trust & Savings Bank, Santa Barbara, California	1,000
298	First National Trust & Savings Bank, Santa Barbara, California	1,000
300	First National Trust & Savings Bank, Santa Barbara, California	1,000
340	Bank of America, Los Angeles, California	1,000
342	Bank of America, Los Angeles, California	1,000

Number	Holder	Amount
344	Bank of America, Los Angeles, California	1,000
346	Bank of America, Los Angeles, California	1,000
348	Bank of America, Los Angeles, California	1,000
354	First National Bank, Harlingen, Texas	1,000
356	First National Bank, Harlingen, Texas	1,000
362	Wm. G. Griffith, Santa Barabara, California	1,000
368	First National Bank, Harlingen, Texas	1,000
372	County National Bank & Trust Company, Santa Barbara, California.	1.000
380	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
382	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
384	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
386	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000.
387	Realty Acceptance Corporation, Harlingen, Texas	1,000
388	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
389	Reagan County (Address Unknown)	1,000
390	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
391	Reagan County (Address Unknown)	1,000
392	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000

Number	Holder	Amount
393	Reagan County (Address Unknown)	1,000
394	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
395	Reagan County (Address Unknown)	1,000
396	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
397	Reagan County (Address Unknown)	
398	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
399	O. J. Winterman, Eagle Lake, Texas	1,000
400	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
402	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
404	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
406	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
408	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
410	First National Trust & Savings Bank, Santa Barbara, California	1,000
412	First National Trust & Savings Bank, Santa Barbara, California	1,000
417	O. J. Winterman, Eagle Lake, Texas	1,000
419	Bank of America, Los Angeles, California	1,000
421	Bank of America, Los Angeles, California	1,000

Number	Holder	Amount
422	Henry P. Lincoln, Trustee, Jones Estate, Santa Barbara, California..	1,000
423	Bank of America, Los Angeles, California	1,000
424	Henry P. Lincoln, Trustee, Jones Estate, Santa Barbara, California..	1,000
425	Bank of America, Los Angeles, California	1,000
427	Bank of America, Los Angeles, California	1,000
429	The Anglo-California National Bank, San Francisco, California	1,000
431	The Anglo-California National Bank, San Francisco, California	1,000
433	The Anglo-California National Bank, San Francisco, California	1,000
435	The Anglo-California National Bank, San Francisco, California	1,000
437	The Anglo-California National Bank, San Francisco, California	1,000
438	Leo. W. Goldstone, San Francisco, California (Alamo National Bank, San Antonio, Texas)	1,000
439	The Anglo-California National Bank, San Francisco, California	1,000
441	The Anglo-California National Bank, San Francisco, California	1,000
443	The Anglo-California National Bank, San Francisco, California	1,000
445	The Anglo-California National Bank, San Francisco, California	1,000
447	The Anglo-California National Bank, San Francisco, California	1,000
449	The Anglo-California National Bank, San Francisco, California	1,000
451	The Anglo-California National Bank, San Francisco, California	1,000

Number	Holder	Amount
452	Realty Acceptance Corporation, Harlingen, Texas	1,000
454	G. C. Crowell, Turlock, California	1,000
458	Elizabeth Kolb, Monterrey, California	1,000
460	Leo W. Goldstone, San Francisco, California (Alamo National Bank, San Antonio, Texas)	1,000
462	O. J. Winterman, Eagle Lake, Texas	1,000
473	Slavonic Benevolent Order, Fayetteville, Texas	1,000
475	Slavonic Benevolent Order, Fayetteville, Texas	1,000
490	Union National Bank, Wichita, Kansas	1,000
492	Union National Bank, Wichita, Kansas	1,000
494	Union National Bank, Wichita, Kansas	1,000
496	Union National Bank, Wichita, Kansas	1,000
498	Union National Bank, Wichita, Kansas	1,000
500	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
501	E. P. McNear Company, Petaluma, California	1,000
505	First National Bank, Harlingen, Texas	1,000
507	G. C. Crowell, Turlock, California	1,000
508	R. J. McMullen, Oakland, California	1,000
509	G. C. Crowell, Turlock, California	1,000
510	E. P. McNear Company, Petaluma, California	1,000
511	G. C. Crowell, Turlock, California	1,000
512	E. P. McNear Company, Petaluma, California	1,000
513	R. J. McMullen, Oakland, California	1,000
514	E. P. McNear Company, Petaluma, California	1,000
515	R. J. McMullen, Oakland, California	1,000
516	E. P. McNear Company, Petaluma, California	1,000
517	R. J. McMullen, Oakland, California	1,000

Number	Holder	Amount
518	E. P. McNear Company, Petaluma, California	1,000
519	Bell County, Belton, Texas	1,000
520	E. P. McNear Company, Petaluma, California	1,000
522	E. P. McNear Company, Petaluma, California	1,000
524	E. P. McNear Company, Petaluma, California	1,000
526	E. P. McNear Company, Petaluma, California	1,000
566	F. F. Madden, Hays City, Kansas	1,000
568	F. F. Madden, Hays City, Kansas	1,000
570	F. F. Madden, Hays City, Kansas	1,000
572	F. F. Madden, Hays City, Kansas	1,000
573	Joseph Goldstone, 1665 Mission, San Francisco, California	1,000
575	Joseph Goldstone, 1665 Mission, San Francisco, California	1,000
577	Bell County, Belton, Texas	1,000
582	Lewis H. Cromwell, Petaluma, California	1,000
590	Bank of America, San Francisco, California	1,000
592	Dorothea Hagar (Address Unknown)	1,000
613	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
626	First National Bank, Harlingen, Texas	1,000
636	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
637	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
638	C. J. Moore, Brown-Crummer Company, Dallas, Texas	1,000

Number	Holder	Amount
639	C. J. Moore, Brown-Crummer Company, Dallas, Texas	1,000
640	C. J. Moore, Brown-Crummer Company, Dallas, Texas	1,000
641	C. J. Moore, Brown-Crummer Company, Dallas, Texas	1,000
642	C. J. Moore, Brown-Crummer Company, Dallas, Texas	1,000
643	C. J. Moore, Brown-Crummer Company, Dallas, Texas	1,000
644	C. J. Moore, Brown-Crummer Company, Dallas, Texas	1,000
645	C. J. Moore, Brown-Crummer Company, Dallas, Texas	1,000
650	Bell County, Belton, Texas	1,000
682	Cameron County Water Improvement District # One	500
688	A. F. Breiling, Executor for Raabe, Bank of America, Healdsburg Branch, California	500
690	A. F. Breiling Executor for M. Raabe, Bank of America, Healdsburg Branch, California	500
704	O. J. Winterman, Eagle Lake, Texas.	500
716	American General Insurance Company, Houston, Texas	500
720	Cameron County Water Improvement District Number One, Harlingen, Texas	500
722	Cameron County Water Improvement District Number One, Harlingen, Texas	500
724	O. J. Winterman, Eagle Lake, Texas.	500
734	Avery-Fuller Childrens Center, c/o J. J. Meigs, San Francisco, California	500
738	Cameron County Water Improvement District Number One, Harlingen, Texas	500

Number	Holder	Amount
740	Cameron County Water Improvement District Number One, Harlingen, Texas	500
761	First National Bank, Harlingen, Texas	500
763	First National Bank, Harlingen, Texas	500
765	First National Bank, Harlingen, Texas	500
768	First National Bank, Harlingen, Texas	500
769	Avery-Fuller Childrens Center, San Francisco, California, c/o J. J. Meigs	500
770	Avery-Fuller Childrens Center, San Francisco, California, c/o J. J. Meigs	500
771	O. J. Winterman, Eagle Lake, Texas	500
772	Avery-Fuller Childrens Center, San Francisco, California, c/o J. J. Meigs	500
773	O. J. Winterman, Eagle Lake, Texas.	500
774	Avery-Fuller Childrens Center, San Francisco, California, c/o J. J. Meigs	500
775	American General Insurance Company, Houston, Texas	500
776	Avery-Fuller Childrens Center, San Francisco, California, c/o J. J. Meigs	500
777	Leo. W. Goldstone, San Francisco, California	500
779	Leo. W. Goldstone, San Francisco, California	500
780	O. J. Winterman, Eagle Lake, Texas.	500
784	O. J. Winterman, Eagle Lake, Texas.	500
785	Cameron County Water Improvement District Number One, Harlingen, Texas	500
786	First National Bank, Harlingen, Texas	500
787	Cameron County Water Improvement District Number One, Harlingen, Texas	500

Number	Holder	Amount
789	Cameron County Water Improvement District Number One, Harlingen, Texas	500
791	Cameron County Water Improvement District Number One, Harlingen, Texas	500
793	Cameron County Water Improvement District Number One, Harlingen, Texas	500
795	Leo W. Goldstone, 1665 Mission, San Francisco, California	500
797	Leo W. Goldstone, 1665 Mission, San Francisco, California	500
799	Joseph Goldstone, 1665 Mission, San Francisco, California	500
801	Joseph Goldstone, 1665 Mission, San Francisco, California	500
803	C. E. Moore, (Brown-Crummer Company), Dallas, Texas	500
807	C. E. Moore, (Brown-Crummer Company), Dallas, Texas	500
808	C. E. Moore, (Brown-Crummer Company), Dallas, Texas	500
809	Henry P. Lincoln, Trustee, Estate Mary W. Pierce, Santa Barbara, California	
826	Cameron County Water Improvement District Number One, Harlingen, Texas	500
828	Cameron County Water Improvement District Number One, Harlingen, Texas	500
830	Cameron County Water Improvement District Number One, Harlingen, Texas	500
832	Cameron County Water Improvement District Number One, Harlingen, Texas	500

Number	Holder	Amount
834	Cameron County Water Improvement District Number One, Harlingen, Texas	500
835	Mrs. Alice H. Corbett, c/o Planters & Merchants Savings Bank, Oakland, California	500
836	Cameron County Water Improvement District Number One, Harlingen, Texas	500
837	Bell County, Belton, Texas	500
838	Cameron County Water Improvement District Number One, Harlingen, Texas	500
840	Lettus N. Crowell, New Orleans, Louisiana	500
842	Cameron County Water Improvement District Number One, Harlingen, Texas	500
844	O. J. Winterman, Eagle Lake, Texas.	500
846	O. J. Winterman, Eagle Lake, Texas.	500
848	O. J. Winterman, Eagle Lake, Texas.	500
850	O. J. Winterman, Eagle Lake, Texas.	500
871	C. N. Flint, c/o Security 1st National Bank, Los Angeles, California	1,000
872	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
873	First National Bank, Harlingen, Texas	1,000
874	First National Bank, Harlingen, Texas	1,000
875	C. N. Flint, Los Angeles, California.	1,000
876	First National Bank, Kalamazoo, Michigan	1,000
877	Mary O. Lewis, Houston, Texas	1,000
878	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
881	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000

Number	Holder	Amount
882	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
883	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
885	C. N. Flint, Los Angeles, California	1,000
886	First National Bank, Harlingen, Texas	1,000
887	First National Bank, Harlingen, Texas	1,000
888	First National Bank, Harlingen, Texas	1,000
889	First National Bank, Harlingen, Texas	1,000
890	First National Bank, Harlingen, Texas	1,000
891	C. N. Flint, c/o Securities 1st National Bank, Los Angeles, California	1,000
892	V. G. Berrian, Highland, N. Y.	1,000
894	Neighbors of Woodcraft (Address Unknown)	1,000
895	Wm. P. Hopkins, Spokane, Washington	1,000
896	Neighbors of Woodcraft (Address Unknown)	1,000
898	Wm. P. Hopkins, Spokane, Washington	1,000
907	First National Bank, Harlingen, Texas	1,000
908	First National Bank, Harlingen, Texas	1,000
909	First National Bank, Harlingen, Texas	1,000
921	W. P. Hoplins, Spokane, Washington	1,000
924	Donald S. Hoplins, Lockhaven, Pennsylvania	1,000
925	Donald S. Hopkins, Lockhaven, Pennsylvania	1,000
929	Realty Acceptance Corporation, Harlingen, Texas	1,000
930	Realty Acceptance Corporation, Harlingen, Texas	1,000
932	C. C. Crowell, Turlock, California	1,000
933	Neighbors of Woodcraft (Address Unknown)	1,000

Number	Holder	Amount
940	Donald S. Hopkins, Lockhaven, Pennsylvania	1,000
941	Donald S. Hopkins, Lockhaven, Pennsylvania	1,000
943	Neighbors of Woodcraft (Address Unknown)	1,000
944	Neighbors of Woodcraft (Address Unknown)	1,000
945	Neighbors of Woodcraft (Address Unknown)	1,000
946	Neighbors of Woodcraft (Address Unknown)	1,000
947	Neighbors of Woodcraft (Address Unknown)	1,000
948	Neighbors of Woodcraft (Address Unknown)	1,000
949	Neighbors of Woodcraft (Address Unknown)	1,000
950	Zavalla County State Bank, Crystal City, Texas	1,000
951	Zavalla County State Bank, Crystal City, Texas	1,000
952	Priscilla Alden, National Bank of Fairhaven, Massachusetts	1,000
953	Priscilla Alden, National Bank of Fairhaven, Massachusetts	1,000
954	Zavalla County State Bank, Crystal City, Texas	1,000
955	Zavalla County State Bank, Crystal City, Texas	1,000
956	Zavalla County State Bank, Crystal City, Texas	1,000
957	Neighbors of Woodcraft (Address Unknown)	1,000
958	Neighbors of Woodcraft (Address Unknown)	1,000
959	Zavalla County State Bank, Crystal City, Texas	1,000

Number	Holder	Amount
960	Zavalla County State Bank, Crystal City, Texas	1,000
961	Zavalla County State Bank, Crystal City, Texas	1,000
962	Zavalla County State Bank, Crystal City, Texas	1,000
963	Zavalla County State Bank, Crystal City, Texas	1,000
964	First National Bank, Harlingen, Texas	1,000
965	First National Bank, Harlingen, Texas	1,000
966	First National Bank, Harlingen, Texas	1,000
969	Neighbors of Woodcraft (Address Unknown)	1,000
970	Neighbors of Woodcraft (Address Unknown)	1,000
971	Neighbors of Woodcraft (Address Unknown)	1,000
972	Neighbors of Woodcraft (Address Unknown)	1,000
973	Neighbors of Woodcraft (Address Unknown)	1,000
974	Neighbors of Woodcraft (Address Unknown)	1,000
975	Neighbors of Woodcraft (Address Unknown)	1,000
976	Neighbors of Woodcraft (Address Unknown)	1,000
977	Neighbors of Woodcraft (Address Unknown)	1,000
978	Neighbors of Woodcraft (Address Unknown)	1,000
979	Neighbors of Woodcraft (Address Unknown)	1,000
980	Neighbors of Woodcraft (Address Unknown)	1,000
981	Neighbors of Woodcraft (Address Unknown)	1,000
982	C. C. Crowell, Turlock, California	1,000

Number	Holder	Amount
983	Neighbors of Woodcraft (Address Unknown)	1,000
984	Neighbors of Woodcraft (Address Unknown)	1,000
993	Neighbors of Woodcraft (Address Unknown)	1,000
994	Neighbors of Woodcraft (Address Unknown)	1,000
995	Neighbors of Woodcraft (Address Unknown)	1,000
996	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
997	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
998	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
999	First National Bank, Harlingen, Texas	1,000
1001	Neighbors of Woodcraft (Address Unknown)	1,000
1002	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
1003	Cameron County Water Improvement District Number One, Harlingen, Texas	1,000
1004	Neighbors of Woodcraft (Address Unknown)	1,000
1005	Neighbors of Woodcraft (Address Unknown)	1,000
1006	Neighbors of Woodcraft (Address Unknown)	1,000
1015	First National Bank, Harlingen, Texas	1,000
1022	C. N. Flint, Securities National Bank, Los Angeles, California	1,000

Number	Holder	Amount
1023	Wm. P. Hopkins, Spokane, Washington	500
1024	Wm. P. Hopkins, Spokane, Washington	500
1025	C. N. Flint, Securities First National Bank, Los Angeles, California	500
1026	Cameron County Water Improvement District Number One, Harlingen, Texas	500
1027	Cameron County Water Improvement District Number One, Harlingen, Texas	500
1030	Wm. P. Hopkins, Los Angeles, California	500
1031	Donald Hopkins, Lockhaven, Pennsylvania	500
1043	Realty Acceptance Corporation, Harlingen, Texas	500
1044	Neighbors of Woodcraft (Address Unknown)	500
1047	Neighbors of Woodcraft (Address Unknown)	500
1048	First National Bank, Harlingen, Texas	500
1049	First National Bank, Harlingen, Texas	500
1050	First National Bank, Harlingen, Texas	500
1051	First National Bank, Harlingen, Texas	500
1052	First National Bank, Harlingen, Texas	500
1053	First National Bank, Harlingen, Texas	500
1054	First National Bank, Harlingen, Texas	500
1059	Cameron County Water Improvement District Number One, Harlingen, Texas	500
1060	Cameron County Water Improvement District Number One, Harlingen, Texas	500
1061	Cameron County Water Improvement District Number One, Harlingen, Texas	500

Number	Holder	Amount
1062	Cameron County Water Improvement District Number One, Harlingen, Texas	500
1063	Cameron County Water Improvement District Number One, Harlingen, Texas	500
1064	Cameron County Water Improvement District Number One, Harlingen, Texas	500
1065	Cameron County Water Improvement District Number One, Harlingen, Texas	500

Prayer for Relief.

Your Petitioner prays that this Honorable Court approve the same according to Provision of Section 80 of said Act, and that your Honor issue notice for publication and that the same be published in some reliable publication for three (3) consecutive weeks, as provided by Section C; and, in this connection, Petitioner alleges that the "Bond Buyer" is the publication which would come most nearly reaching all of the bond holders than any other publication and that said notice fix a hearing to be within approximately thirty (30) days. And upon final hearing that the plan of readjustment as set forth in this Petition be in all things confirmed.

provided that at said hearing it proves that said plan is fair and equitable to all parties.

GREENWOOD & LEWIS,
By W. B. LEWIS,
Attorneys for Petitioners.

---

35 The State of Texas,
County of Cameron.

Now comes H. L. Starnes, Manager of said District, who states on oath that I have read over said

Petition and the same is true and correct to the best of my knowledge and belief, and that said Petition is the official act of said District, there being an order passed and entered on the Minutes of said District on the 18th day of June, 1934, authorizing the filing of this Petition.

H. L. STARNES.

Subscribed to and Sworn to before me, by H. L. Starnes, Manager of said District, on this the 22 day of June, A. D. 1934.

W. H. MAUPIN,
(Seal) Notary Public in and for Cameron County, Texas.

ORDER APPROVING AMENDED PETITION AND DIRECTING NOTICES TO BE GIVEN TO BONDHOLDERS, ETC., OF HEARING OF PETITION.

36 Filed August 22, 1934.

(Title Omitted.)

On this, the 22nd day of August, 1934, came on to be heard the application and petition of Cameron County Water Improvement District No. One as amended and filed on August 22, 1934.

And it appearing to the Court that said amended petition as filed complies with the provisions of said Act and has been filed in good faith, the same is approved as properly filed and the said Cameron County Water Improvement District No. One is hereby directed to give notice as required by law of the bondholders of said District, by first causing a notice to be published in the "Bond Buyer" of New York for three

successive weeks, and further, by giving written notices to all known bondholders that a hearing will be had on said petition, in the City of Houston, Texas, on the 1st day of October, 1934, at 10 A. M. at which time the petition will be considered and this Court will determine whether the plan of settlement is fair, just and equitable, and whether same shall be approved or rejected.

J. C. HUTCHESON, JR.,
Judge Presiding for the Southern District of Texas.

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37 PETITION FOR INTERVENTION.

Filed Oct. 1, 1934.

(Title Omitted.)

Come now C. L. Ashton of Harris County, Texas, J. W. Terry of Galveston County, Texas, individually and as trustee for Rebecca Terry White, C. W. Griffin, A. G. Griffin and L. E. Wood of San Francisco County, California, and West Coast Life Insurance Company, a corporation, creditors of Cameron County Water Improvement District No. One, whose rights will be affected by the proceedings filed herein by said Cameron County Water Improvement District No. One and the proposed plan for the readjustment of the debts of said District, and respectfully appear herein for the purpose of being heard on the question of the proposed confirmation of the plan proposed by the petitioner and here referred to, and adopt as their pleading the allegations made by them in their contest filed in answer to the petitioner's pleading.

And persons hereinabove named respectfully ask of the Court leave to intervene herein and to be heard on all questions arising in the proceedings and respect-

fully ask leave to adopt as their pleading in intervention the allegations contained in their contest herein filed and respectfully pray that they be heard as interveners on all issues raised by the pleadings filed by them as contestants.

W. P. HAMBLEN,
Attorney for C. L. Ashton.
JOYCE COX,
Attorney for J. W. Terry, Individually and as trustee for Rebecca Terry.
BAKER, BOTTS, ANDREWS & WHARTON,
By PALMER HUTCHESON,
Attorney for C. W. Griffin, A. G. Griffin, L. E. Wood and West Coast Life Insurance Company.

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39 ORDER ALLOWING CONTESTANTS TO INTERVENE.

Filed Oct. 5, 1934.

(Title Omitted.)

On this the 5 day of October, A. D. 1934, came on for consideration petition of contestants C. L. Ashton, J. W. Terry, individually and as trustee for Rebecca Terry White, C. W. Griffin, A. G. Griffin, L. E. Wood and West Coast Life Insurance Company, to intervene herein and to be heard on all questions raised by the aforesaid applicants for intervention in their pleading in this cause filed as contestants, and the Court having considered the same:

It is Hereby Ordered that the aforesaid applicants be and they are hereby granted leave to intervene here-

in and to be heard on all questions arising in this proceeding and all issues raised by the aforesaid parties as contestants herein.

It is Further Ordered that the allegations of the contest herein filed by them shall be considered their pleadings as interveners.

T. M. KENNERLY, Judge.

SECOND AMENDED ORIGINAL PETITION.

40 Filed Dec. 5, 1934.

No. 520 In Bankruptcy.

In Re: Cameron County Water Improvement District Number One.

In the District Court of the United States for the Southern District of Texas, Brownsville Division.

To the Honorable T. M. Kennerly, Judge of said Court:

41 I.

Comes now Cameron County Water Improvement District Number One, whose Post Office address is Harlingen, Texas, the leave of the Court being first had and obtained, and files this its Second Amended Original Petition and for cause of action and grounds for relief, petitioner would show to the Court as follows:

That your petitioner is a water improvement district, existing under and by virtue of the laws of the State

of Texas; that it was created in 1914 as Cameron County Irrigation District Number One, pursuant to the authority granted in Chapter 172 of the General Laws of the State of Texas, passed at the regular session of the 33rd Legislature, as shown on pages 380-408, inclusive, of the acts of said session and known as House Bill 183, which was approved April 9, 1913, which said legislation was enacted pursuant to the authority granted to the Legislature in Section 52, Article 3 of the Constitution of Texas; that in 1919 your petitioner was converted into Cameron County Water Improvement District Number One pursuant to the authority of Chapter 87 of the general laws of the State of Texas, passed at the regular session of the 35th Legislature and shown on pages 172-200, both inclusive, of the acts of said session and known as House Bill 238, approved March 19, 1917, which legislation was enacted pursuant to the authority conferred upon the legislature by Section 52 of Article 3 of the Constitution of Texas, said district containing 43,500 acres of land, gross, and being wholly situated within Cameron County, Texas, with its offices and principal place of business situated in Harlingen, Texas, and have been so situated since its creation, said district being situated also within the Southern District of Texas and wholly within the Brownsville division.

That your petitioner was created for the purpose of furnishing water for irrigation and domestic purposes to the arid or semi-arid land situated therein and is a public corporation and defined district under the constitution and laws of this state, with express powers to sue and be sued and with full power to perform the proprietary and/or corporate function of furnishing water for irrigation and domestic uses to the lands situated therein, and said district has power to do all things reasonably necessary and incident to furnishing water for irriga-

Number	Holder	Amount
1062	Cameron County Water Improvement District Number One, Harlingen, Texas	500
1063	Cameron County Water Improvement District Number One, Harlingen, Texas	500
1064	Cameron County Water Improvement District Number One, Harlingen, Texas	500
1065	Cameron County Water Improvement District Number One, Harlingen, Texas	500

Prayer for Relief.

Your Petitioner prays that this Honorable Court approve the same according to Provision of Section 80 of said Act, and that your Honor issue notice for publication and that the same be published in some reliable publication for three (3) consecutive weeks, as provided by Section C; and, in this connection, Petitioner alleges that the "Bond Buyer" is the publication which would come most nearly reaching all of the bond holders than any other publication and that said notice fix a hearing to be within approximately thirty (30) days. And upon final hearing that the plan of readjustment as set forth in this Petition be in all things confirmed.

provided that at said hearing it proves that said plan is fair and equitable to all parties.

GREENWOOD & LEWIS,
By W. B. LEWIS,
Attorneys for Petitioners.

---

35 The State of Texas,
County of Cameron.

Now comes H. L. Starnes, Manager of said District, who states on oath that I have read over said

Petition and the same is true and correct to the best of my knowledge and belief, and that said Petition is the official act of said District, there being an order passed and entered on the Minutes of said District on the 18th day of June, 1934, authorizing the filing of this Petition.

H. L. STARNES.

Subscribed to and Sworn to before me, by H. L. Starnes, Manager of said District, on this the 22 day of June, A. D. 1934.

W. H. MAUPIN,
(Seal) Notary Public in and for Cameron County, Texas.

ORDER APPROVING AMENDED PETITION AND DIRECTING NOTICES TO BE GIVEN TO BONDHOLDERS, ETC., OF HEARING OF PETITION.

36 Filed August 22, 1934.

(Title Omitted.)

On this, the 22nd day of August, 1934, came on to be heard the application and petition of Cameron County Water Improvement District No. One as amended and filed on August 22, 1934.

And it appearing to the Court that said amended petition as filed complies with the provisions of said Act and has been filed in good faith, the same is approved as properly filed and the said Cameron County Water Improvement District No. One is hereby directed to give notice as required by law of the bondholders of said District, by first causing a notice to be published in the "Bond Buyer" of New York for three

successive weeks, and further, by giving written notices to all known bondholders that a hearing will be had on said petition, in the City of Houston, Texas, on the 1st day of October, 1934, at 10 A. M. at which time the petition will be considered and this Court will determine whether the plan of settlement is fair, just and equitable, and whether same shall be approved or rejected.

J. C. HUTCHESON, JR.,
Judge Presiding for the Southern District of Texas.

---

37 PETITION FOR INTERVENTION.

Filed Oct. 1, 1934.

(Title Omitted.)

Come now C. L. Ashton of Harris County, Texas, J. W. Terry of Galveston County, Texas, individually and as trustee for Rebecca Terry White, C. W. Griffin, A. G. Griffin and L. E. Wood of San Francisco County, California, and West Coast Life Insurance Company, a corporation, creditors of Cameron County Water Improvement District No. One, whose rights will be affected by the proceedings filed herein by said Cameron County Water Improvement District No. One and the proposed plan for the readjustment of the debts of said District, and respectfully appear herein for the purpose of being heard on the question of the proposed confirmation of the plan proposed by the petitioner and here referred to, and adopt as their pleading the allegations made by them in their contest filed in answer to the petitioner's pleading.

And persons hereinabove named respectfully ask of the Court leave to intervene herein and to be heard on all questions arising in the proceedings and respect-

fully ask leave to adopt as their pleading in intervention the allegations contained in their contest herein filed and respectfully pray that they be heard as interveners on all issues raised by the pleadings filed by them as contestants.

W. P. HAMBLEN,
Attorney for C. L. Ashton.
JOYCE COX,
Attorney for J. W. Terry, Individually and as trustee for Rebecca Terry.
BAKER, BOTTS, ANDREWS & WHARTON,
By PALMER HUTCHESON,
Attorney for C. W. Griffin, A. G. Griffin, L. E. Wood and West Coast Life Insurance Company.

---

39 ORDER ALLOWING CONTESTANTS TO INTERVENE.

Filed Oct. 5, 1934.

(Title Omitted.)

On this the 5 day of October, A. D. 1934, came on for consideration petition of contestants C. L. Ashton, J. W. Terry, individually and as trustee for Rebecca Terry White, C. W. Griffin, A. G. Griffin, L. E. Wood and West Coast Life Insurance Company, to intervene herein and to be heard on all questions raised by the aforesaid applicants for intervention in their pleading in this cause filed as contestants, and the Court having considered the same:

It is Hereby Ordered that the aforesaid applicants be and they are hereby granted leave to intervene here-

in and to be heard on all questions arising in this proceeding and all issues raised by the aforesaid parties as contestants herein.

It is Further Ordered that the allegations of the contest herein filed by them shall be considered their pleadings as interveners.

T. M. KENNERLY, Judge.

SECOND AMENDED ORIGINAL PETITION.

Filed Dec. 5, 1934.

No. 520 In Bankruptcy.

In Re: Cameron County Water Improvement District Number One.

In the District Court of the United States for the Southern District of Texas, Brownsville Division.

To the Honorable T. M. Kennerly, Judge of said Court:

I.

Comes now Cameron County Water Improvement District Number One, whose Post Office address is Harlingen, Texas, the leave of the Court being first had and obtained, and files this its Second Amended Original Petition and for cause of action and grounds for relief, petitioner would show to the Court as follows:

That your petitioner is a water improvement district, existing under and by virtue of the laws of the State

of Texas; that it was created in 1914 as Cameron County Irrigation District Number One, pursuant to the authority granted in Chapter 172 of the General Laws of the State of Texas, passed at the regular session of the 33rd Legislature, as shown on pages 380-408, inclusive, of the acts of said session and known as House Bill 183, which was approved April 9, 1913, which said legislation was enacted pursuant to the authority granted to the Legislature in Section 52, Article 3 of the Constitution of Texas; that in 1919 your petitioner was converted into Cameron County Water Improvement District Number One pursuant to the authority of Chapter 87 of the general laws of the State of Texas, passed at the regular session of the 35th Legislature and shown on pages 172-200, both inclusive, of the acts of said session and known as House Bill 238, approved March 19, 1917, which legislation was enacted pursuant to the authority conferred upon the legislature by Section 52 of Article 3 of the Constitution of Texas, said district containing 43,500 acres of land, gross, and being wholly situated within Cameron County, Texas, with its offices and principal place of business situated in Harlingen, Texas, and have been so situated since its creation, said district being situated also within the Southern District of Texas and wholly within the Brownsville division.

That your petitioner was created for the purpose of furnishing water for irrigation and domestic purposes to the arid or semi-arid land situated therein and is a public corporation and defined district under the constitution and laws of this state, with express powers to sue and be sued and with full power to perform the proprietary and/or corporate function of furnishing water for irrigation and domestic uses to the lands situated therein, and said district has power to do all things reasonably necessary and incident to furnishing water for irriga-

tion as aforesaid, and one of its incidental powers in aid of its purpose was the power to tax and levy assessments for maintenance and operation and to issue bonds for construction purposes, secured by a tax upon the lands situated therein; that in 1914 said district issued $750,000.00 in 6% serial bonds and thereafter, in 1919, said district issued $190,000.00 of 6% serial bonds, for the purpose of purchasing or constructing a canal system; that there is now outstanding a total of $802,000.00 of said bonds, owned by various citizens of the several states of the United States of America.

II.

That your petitioner has been in operation for approximately 20 years and was created as a promotion project for the colonization and development of the lands therein; that at the time of its creation the country was sparcely settled and had practically no bonded debt outstanding; that during the history of its existence, at least 50% of the taxes paid upon the lands therein have been paid from development, promotion, colonization, and other sources outside of the land itself; that about 1929 colonization ceased in this District, as the lands were practically all developed and since that time and in the future the district must look to its only permanent resource, namely, agriculture for the payment of its taxes and assessments; that about the same time said colonization ceased and as a result of such development, many over-lapping districts and municipalities began the issuance of bonds for public improvement, practically all of which were issued from 1926 to 1930, and as a result of such improvements and the sales of the public credit for the same, this district, in addition to owing the $802,000.00 in bonds above set out, which bonds have 6% interest coupons attached thereto that aggregate approximately as much as the principal, the lands sit-

uated within this district have the following overlapping municipalities with the bonded debts set opposite them, as follows:

43 Cameron County $7,828,000.00 principal, bearing interest at rates ranging from 4½ to 5½%, maturing serially over a period of 30 years;

Harlingen Independent School District, $708,000.00 5% bonds maturing serially over a period of 40 years;

Stuart Independent School District $42,000.00 5% bonds, maturing serially over a period of 40 years;

Wilson Independent School District $43,000.00 5% bonds maturing serially over a period of 40 years;

Rangerville Independent School District $37,000.00 5% maturing serially over a period of 40 years;

Briggs-Coleman Common School District $23,000.00 5% bonds maturing serially over a period of 40 years;

City of Harlingen approximately $700,000.00 5½% and 6% bonds and warrants maturing serially over a period of 40 years;

Los Indios Independent School District $15,000.00 5% bonds maturing serially over a period of 40 years;

Arroyo-Colorado Navigation District $490,000.00 5½% bonds maturing serially over a period of 33 years;

Port Isabel-San Benito Navigation District $500,000 5½% bonds maturing serially over a period of 35 years.

That all the above districts and municipalities overlap your petitioner and have constitutional and statutory liens to secure the payment of all the above bonded debts, aggregating $10,386,000.00, and the interest coupons attached to said bonds exceed in amount the principal of the same, and said districts and municipalities, in addition thereto levy taxes upon the above land for maintenance and operation purposes, making the average tax levy on the lands in said district for the 5 years next preceding the filing of this petition $7.73 per acre, and the major portion of the above bonded debt was created between 1926 and 1930.

That many of the lands in said district are subject to seepage and are suffering from lack of proper drainage, both surface and subdrainage, as a result of which a large acreage in said district has become water-logged, is wholly unproductive, aggregating about 15% of the lands in the District, and a large additional area has become damaged to such an extent that the lands cannot be farmed profitably.

44

That in addition to the above factors the Lower Rio Grande Valley, as well as the Nation at large, for the past few years, has been undergoing a major economic depression, causing general unemployment, depreciation in the price and demand for agricultural products and as a result thereof, the lands in this district during said period have been unable to produce sufficient money for the farmers to make a living or to pay the taxes thereon, and by reason of the general economic conditions, those owning land in other localities or engaged in other pursuits have been unable to pay their taxes in appreciable amounts, as a result of which not over 50% of the lands in said district at this time are using water for irrigation purposes and your petitioner now has matured bond and interest obligations outstanding aggregating $147,000.00, with

only about $13,000.00 in its Sinking Fund with which to pay the same; that a large amount of marginal lands in the district have been unable to pay taxes for long periods of years, in some cases as much as ten years, and there is now in the district an average of three years delinquent taxes for all purposes against the lands in this district, or an average of $23.19 per acre for delinquent taxes against each acre in said district for all taxing purposes.

That your petitioner has made diligent effort to collect said taxes, both delinquent and current and has instituted legal proceedings to foreclose the constitutional lien on the lands to collect said taxes, but said proceedings have been wholly unprofitable to the district and the bond holders thereof, as said lands would not bring sufficient money to pay the taxes thereon owing to the district and the district was forced to buy in said lands at said sales and pay the Court costs thereon and to hold the lands subject to the taxes of all other over-lapping municipalities and taxing districts whose taxes were at least double the amount of taxes which the district held against the same; that said situation is rapidly growing worse; that the percentage of delinquencies for the
45 year 1932 was 63%; in 1933 88.9%; that the average market value of the lands in said district at this time does not exceed $75.00 per acre and the total bonded debt, principal and interest on said district at the present is approximately $100.00 per acre.

As a result of all the above facts, said district is insolvent and wholly unable to pay its debts as they mature and is entitled to file this petition and has filed the same under the provisions of Public Bill No. 251 of the 73rd Congress of the United States, being House Resolution No. 5950, approved May 24, 1934, and effective on that date, same being an amendment

to the laws of the United States effecting bankrupcies and commonly known as the municipal bankruptcy law, and this Court has jurisdiction of this cause under the above law for all the reasons above set out and hereinafter set out.

III.

That by reason of all the facts above set out this district is insolvent both in law and in fact and unable to meet its debts as they mature and desires to effect a plan of readjustment of its bonded debt, as provided in House Resolution No. 5950 above set out and particularly Section 80 thereof.

IV.

That your petitioner realizing its inability to pay its debts as they matured and realizing its insolvent condition, as above set out, and desiring to protect the interests of its bondholders, as well as that of its taxpayers and to enable the district to continue to operate and perform the functions for which it was created, namely the furnishing of water for irrigation and domestic purposes to the lands situated therein, your petitioner filed an application with the Reconstruction Finance Corporation of Washington, D. C., for a loan to refinance its bonded indebtedness outstanding under the provisions of Part 4 of the Emergency Farm Mortgage Act of June, 1933; that the Reconstruction Finance Corporation, after examining into the legality of the district the bonded indebtedness outstanding and after making a careful appraisal of the
46 lands of the district and the irrigation system and considering all the resources of said district and after considering the market value of the bonds of said district, decided that said district was entitled to a loan of $402,500.00; with which to pay

its bonded indebtedness outstanding, resolving that the district was financially sound for a loan of that size with which to refund all of its bonded indebtedness and that a price of 49.8% on each dollar par value of its bonded indebtedness would be a just and equitable payment to the bondholders in cash for their bonds, said Reconstruction Finance Corporation authorizing said loan to this district in the above amount to refinance its bonded indebtedness outstanding, said order being entered on the 13th day of January, 1934, a copy of said order of the Reconstruction Finance Corporation being set out herein and marked Exhibit "A" for identification.

That thereafter on April 2, 1934, your petitioner entered an order in the minutes of the Board of Directors of said district ratifying, accepting and approving said loan from the Reconstruction Finance Corporation, according to the provisions of the order of said Corporation, set out herein as Exhibit "A", said order of the Board of Directors of your petitioner accepting the provisions of said order of the Reconstruction Finance Corporation, being set out in this petition and marked Exhibit "B" for identification.

47 EXHIBIT "A".

P. 1.

Meeting of Reconstruction Finance Corporation.

Resolution.

Re: Cameron County Water Improvement District Number One.

Docket Ref. No. 7.

Whereas, Cameron County Water Improvement District Number One, of Cameron County, of Harlingen,

Texas, a political subdivision duly organized under the laws of the State of Texas (herein called the "District"), has applied to this Corporation for a loan to enable it to reduce and refinance its outstanding indebtedness, pursuant to the provisions of Section 36, Part 4, of the Emergency Farm Mortgage Act of 1933, as amended, and

Whereas, the District has represented that prior to May 12, 1933, it had completed a project devoted chiefly to the improvement of lands for agricultural purposes and that in connection with such project it had incurred and now has outstanding indebtedness approximately the following amounts:

Nature of Debt—Bonds.
Principal Amount—$802,000.00.
Interest unpaid on ....., 193..—.....
Total Outstanding—$802,000.00.

Such indebtedness, together with all interest accrued and unpaid thereon as of October 1, 1933, is hereinafter referred to as the "Existing Debt" and the bonds and coupons or other instruments evidencing such debt are hereinafter referred to as the "Old Securities"; and

Whereas, this Corporation has caused an appraisal to be made of the property securing or underlying the Old Securities and has determined that the project of the District is economically sound, and now desires to make a loan to enable said District to reduce and refinance all or by far the greater part of such existing debt on the basis of payments to holders of its Old Securities, or to Committees or other representatives of such holders, at the rates herein set forth,

Now, Therefore, be it Resolved, that there is hereby authorized a loan of not exceeding $402,-
48 500.00, to or for the benefit of said District, subject, however, to the following terms and conditions:

1. Time Limits: All loans hereunder shall be disbursed before the expiration of the time within which this Corporation is or shall hereafter be authorized by law to make such loans, but the Chief or Acting Chief of the Drainage, Levee and Irrigation Division (hereinafter referred to as the "Division Chief") may fix any shorter time within which such loans must be disbursed and may from time to time extend any dates so fixed by him.

2. Deposit of Old Securities: The holders of Old Securities who join in this plan of refinancing shall deposit the same with one or more committees, depositories, or other responsible representatives satisfactory to them which shall consent to the plan of refinancing contemplated by this resolution (hereinafter referred to as "Owners' Agents"), or shall otherwise give this Corporation satisfactory assurance that the Old Securities held by them will be subjected to such plan, in which latter case they are hereinafter referred to as "Consenting Owners." Old Securities deposited with Owner's Agents or held by consenting owners are hereinafter referred to as "Deposited Securities." Each Owners' Agent shall be duly authorized to receive all moneys payable to the holders of Old Securities deposited with it, to surrender the Deposited Securities and do all other acts and things necessary to enable the District to effect a reduction in its indebtedness to the extent that in the manner contemplated by this resolution.

No loan shall be made hereunder (a) unless all of the old Securities shall be thus deposited or (b) unless

the Division Chief shall deem that such a large proportion of such securities has been deposited as will satisfactorily accomplish the purpose of this Corporation in authorizing this loan. In this latter event, as hereinafter more fully provided, lesser amounts may be payable on the Deposited Securities than in case all of the old Securities are deposited.

3. Payments on Deposited Securities: The amounts to be loaned by this Corporation hereunder shall be sufficient to provide for payments of different amounts of money on account of the Deposited Securities as follows:

49

(a) 49.8 cents for each dollar of principal amount of the Deposited Securities, provided that all of the Old Securities shall have been deposited at the time when this Corporation makes its first loan hereunder.

(b) 49.8 cents for each dollar principal amount of such Deposited Securities, in case the District is unable to procure the deposit of all of such Old Securities but shall procure the deposit of such larger proportion thereof as shall be required or approved by the Division chief.

(c) 47.8 cents for each dollar principal amount of Old Securities that are not thus deposited at the time when the first loan is made pursuant to the provisions of sub-paragraph (b) of this section, but which are subsequently deposited within such time or times as may be fixed or approved by the Division Chief. Each Deposited Security shall be accompanied by such of its appurtenant coupons, if any, representing interest accrued on or before October 1, 1933, as may be required by the Division Chief and shall also be accompanied by all coupons representing interest payable thereon after such date. In case any such security shall not be accompanied by any coupons required by

the Division Chief representing interest accrued on or before the aforesaid date, the amount payable thereon shall be reduced in such amount as may be determined by the Division Chief, but such reduction shall not be less than 49.8 cents for each dollar of the face amount of such missing coupons. In any case any Old Securities shall be presented with any missing coupons that mature after the aforsaid date the Division Chief may refuse to accept the same, or if such securities are accepted there shall be deducted from the amount paid on account thereof a sum equal to the full face amount of such missing coupons. In case any Old Securities shall be deposited without being accompanied by all the required coupons and if because of such missing coupons reductions are made in the amounts payable on account of such Old Security, but thereafter such missing coupons are deposited within such time or times as may be prescribed or approved by the Division Chief; there shall be paid on account of such coupons subsequently deposited amounts exactly equal to the sums which were originally deducted from the sum paid on account of such Old Security to which such coupons appertained.

4. Disposition of Balance: Any balance of the loan hereby authorized that is not required for making such payments as aforesaid on account of Deposited Securities may be applied in the sole discretion of and as may be approved by the Division Chief to either of the following purposes:

(a) To the payment of such persons as the Division Chief may designate of costs incurred in connection with this refinancing for fees of municipal bond counsel, printing and issuance of new bonds, or appraisal of the lands within the District, but only in such amounts as may be approved by the Division Chief.

(b) To payment of any sums that it may prove advisable to advance in order to avoid the necessity for issuance of any New Bonds having a principal amount of less than $1,000.00.

In addition to the maximum amount of the loan authorized above, the Treasurer of the Corporation is also authorized to advance such sums or as may be approved by the Division Chief for payment of any interest accrued for the then current interest period on any bonds or securities acquired by this Corporation and any other sum required for interest adjustments.

5. How Loans are to be Effected: Unless the Division Chief shall direct otherwise, loans made hereunder shall be conditioned upon the authorization by the District of new 4% bonds (herein referred to as "New Bonds") having a principal amount sufficient in the option of said Division Chief and Counsel for this Corporation to insure completion of the proposed refinancing. Such loans shall be effected in any of the following ways as said Division Chief and Counsel shall direct:

(a) If the Division Chief shall deem it advisable to have the Deposited Securities canceled immediately upon issuance of the New Bonds, such loans may be advanced directly to the District or to the Owners' Agents and consenting owners at the time of the surrender and cancellation of the Deposited Securities but only upon receipt by this Corporation of
51 New Bonds having a principal amount equal to the amount of the loans it has made thereunder.

(b) In the event that the Division Chief shall deem it necessary to keep any or all of the Deposited Securities alive for a greater or lesser length of time in order

to maintain a parity of rights as between the holder of the Deposited Securities (Old) who did not deposit same, or for any other purpose, then such loans may be made directly to the Owners' Agents and consenting owners. All such loans shall be represented by the notes of such consenting owners or agents, and the Deposited Securities shall be pledged as security therefor. When executed by owners' Agents, such notes may provide that the maker thereof shall not be individually liable thereon. Each such note shall give this Corporation authority at any time to surrender all or any part of the pledged securities to the District in exchange for New Bonds and shall also authorize this Corporation, upon first having rquested payments of such notes and payment having been refused, to purchase the pledged securities at such sale as may be provided for by such note.

Each such note shall bear interest at the rate of 4% per annum, payable as nearly as practicable on the interest payment dates borne by the major part of the Deposited Securities. The District shall not be a party to such note but in case it shall pay the interest thereon promptly when and as the same falls due, the Corporation will accept such interest payments and will thereupon give credit to the District for payment of the interest for such period on all the Deposited Securities at that time held by this Corporation, it being expressly provided, however, that nothing contained in this resolution shall be deemed to limit the right of this Corporation to enforce full payment of interest or principal on Deposited Securities it may hold, at any time when it may deem it advisable to do so in order to protect its rights as holder of the Deposited Securities against any rights claimed by the holders of Old Securities that have not been deposited.

As a condition precedent to the making of any such loan, in the manner provided in this sub-paragraph, the

Division Chief and Counsel for this Corpora-
52 tion may require the District to execute or agree to execute such amount of its New 4% Bonds as they may specify and when executed, to deliver such Bonds to a trustee or custodian satisfactory to this Corporation. Such trustee or other custodian shall be irrevocably bound to exchange such New Bonds for the Deposited Securities held by this Corporation at any time when it shall so request, but the New Bonds thus to be delivered to this Corporation shall not exceed in principal amount the sum then owed to this Corporation on account of the advances which it has made hereunder, together with any interest then accrued and unpaid thereon.

(c) In the event that Counsel for this Corporation shall have any doubt as to the legal authority of the District to issue New Bonds in exchange for some part or some class of the Deposited Securities, provision shall be made for delivery to this Corporation of New Bond having a principal amount equal to the same owed to this Corporation on account of the advances it has made or is thus making hereunder, upon the surrender and cancellation of only such part of the Deposited Securities as such counsel deems the District can lawfully accept in exchange for New Bonds. Promptly after effecting any such exchange of a part of the Deposited Securities for New Bonds, the Treasurer of this Corporation shall surrender or assign to the District without charge all of the Deposited Securities then held by this Corporation that were not previously exchanged for New Bonds.

6. Municipal Bond Counsel. In cases where New Bonds are to be issued, the District at its own expense shall employ nationally recognized municipal bond counsel satisfactory to and approved in writing by counsel for this Corporation and shall cause such bond counsel to prepare resolutions and proceedings au-

thorizing an issue of New Bonds necessary for the purpose of the proposed refinancing. Such resolution and bonds shall comply in all respects with the provisions of Section 36, Part 4, of the Economy Farm Mortgage Act of 1933, as amended. Such counsel shall submit drafts of such resolutions and proceedings to counsel for this Corporation and secure their approval thereof before their adoption and upon the delivery of such New Bonds shall give this Corporation such satisfactory preliminary and final opinions as to the validity thereof and the security
53 therefor as counsel for this Corporation may require.

The District shall also furnish, at its own expense, such opinion or opinions of municipal bond counsel as may be required by and be satisfactory to Counsel for this Corporation with respect to the validity of and security for any Old Securities pledged as collateral for notes taken by this Corporation or otherwise acquired by it.

7. Date, Maturities and Interest of New Bonds: Such New Bonds shall bear such date as shall be satisfactory to Counsel for this Corporation. No part of the principal thereof shall mature during the first three (3) years after their date and such bonds shall mature thereafter in annual installments over a period of Thirty (30) years, commencing at the end of the fourth (4) year from the date they bear according to a maturity schedule satisfactory to the Division Chief. If the District may legally do so, such annual maturities, so far as practicable, shall be such that the totals of the sums payable for interest and for the retirement of bonds shall be approximately the same in each year during which there is a maturity. Interest on New Bonds is to be paid semi-annually unless the Division Chief shall otherwise direct.

8. Covenants of the District: No loan shall be made upon the terms of this resolution until after the District shall have adopted resolutions or otherwise have entered into satisfactory agreements providing that so long as any of the New Bonds or any of the Old Securities pledged with or acquired by this Corporation remain outstanding.

(a) Statutory Covenants: The District will not issue any other bonds having security similar to that of the New Bonds or of the Old Securities pledged with or acquired by this Corporation except with the consent of this Corporation; that, in so far as it lawfully may, the District will pay to this Corporation an amount equal to the amount by which the assessments, taxes, or other charges collected by the District, exceed the costs of operation and maintenance of the project and maturities of interest and principal on its outstanding obligations, and that the District will reduce, in so far as it lawfully may, the annual
54 taxes, assessments and other charges imposed by it for or on account of the project by an amount proportional to the reduction in the corresponding annual requirements for principal and interest of its outstanding indebtedness by reason of the operation of Section 36, Part 4, of the Emergency Farm Mortgage Act of 1933, as amended.

(b) Cash Operating Basis: In the period prior to the first maturity on such New Bonds, or in case no New Bonds shall be issued, then in the period of three years after the first loan shall be made here under (or such longer period as may be fixed by the Division Chief) the District will cause to be levied and collected sufficient assessments, taxes, or other charges to pay all of its operating costs for such period, all tax anticipation obligations of very kind which it then has outstanding and all other indebtedness of the District which is then due and payable or becomes due

and payable during such period (excepting only obligation on Old Securities which are then pledged to or held by this Corporation), and in addition thereto, to leave the District at the end of such period with sufficient cash on hand to pay all obligations which it should meet before the time when its next assessment or taxes become payable to the end that after the expiration of such period the District will be operated on a cash basis with no tax anticipation warrants, notes or other like obligations then outstanding. After the date when the first loan is made hereunder, the District will not incur any indebtedness of any kind unless it can pay such indebtedness at the time due from cash on hand or which it will have on hand at such time from its normal source of revenue and it will not issue any tax anticipation warrants, notes or other obligations of any kind without first securing the written consent of this corporation.

(c) Notice of Meetings: The District will give this Corporation ample notice of any meeting of its governing body at which any matters of importance are to be acted upon, accompanied by a brief statement of the nature of the matters to be considered at such meeting, and this Corporation shall have the right to have such meetings attended by any authorized representative.

55 (d) Physical Conditions: At the end of each six months' period the District will furnish this Corporation with a statement as to the physical condition of all properties owned or maintained by the District, which statement shall be signed by two of its executive officers and by the District Engineer, if it has such an employee.

(e) Annual Budget-Reserve for Interest: In each year the District will prepare an estimate of the amounts which it will be required to pay out during each month of the following year, a statement of the

cash it then has on hand, and an estimate of the cash it will receive during each month of the next year. Such estimates, particularly during the earlier years, shall provide for building up such suitable reserve as may be required by this Corporation for payments of principal and interest in bad years. Such estimates shall be submitted to this Corporation within 60 days prior to the date when the rate or rates of assessments are fixed in each year and the District agrees that in levying taxes or assessments for the following year, it will comply with all reasonable suggestions or requests made to it by this Corporation in connection therewith.

(f) Report on Assessments Levied: Promptly after the levy of any assessments or taxes, this District will notify this Corporation of the amounts of such taxes or assessments, showing separately the amounts levied for each of its funds.

(g) Annual Reports: Promptly upon the making of any audit of the business of the District any year pursuant to the terms of any statute, rule or regulation applicable to such District, it will furnish this Corporation with true copies of such audit reports.

In the event that such reports shall fail to show all receipts and disbursements of the District for the preceding year, including a separate statement of all sales of lands owned by the District, the District will, within 30 days after the close of each of its fiscal years, furnish the Corporation true and accurate reports thereof. The District will also furnish this Corporation with all such other reports, as it may from time to time request in writing.

56 Within 30 days after the close of each of its fiscal years, the District will also give the Corporation a statement giving the name of each land owner within the District who has failed to pay

any District Taxes or assessments payable within the prior year, a brief description of the land subject to such taxes or assessments and a brief statement of what steps have been taken by the District or others to enforce collection thereof.

(h) Attorney for District: In the event that the Corporation shall so request, the District at its own expense will engage any responsible attorney or attorneys designated by this Corporation and shall confer upon such attorneys full power and authority to enforce collections of any delinquent taxes or for any other purpose.

(i) Litigation: The District shall promptly notify this Corporation of any suit or litigation which may be instituted against it.

(j) Access to Records: The District will at all times give the Corporation full access to and copies of all records, reports and files of the District and its governing authority.

(k) Successor: All resolutions and agreements by the District shall provide that any consents that may be given by and any rights thereby conferred upon this Corporation may be exercised by any successor to this Corporation designated by Acts of Congress or by any Department of the United States Government or any Corporation wholly owned by it, or by any person holding responsible office under the United States Government that may at any time be designated for that purpose by this Corporation.

(9) Other Conditions Precedent: This Corporation shall be under no obligations to make any loans

pursuant to this resolution unless and until the following conditions have been complied with to the satisfaction of the Division Chief:

(a) Reassessments: Unless the District shall have complied to the satisfaction of the Division Chief with any requirements he may impose for reassessment of the benefits upon the lands within such District and with any requirements that the Division Chief may impose in connection with the adjustment or collection of taxes or assessments that are now delinquent.

57 (b) Exclusion of Lands: Unless the District shall have complied to the satisfaction of the Division Chief with any requirement he may impose for the exclusion of lands from the District which he deems unproductive or for the other reasons considered should not be included in the District.

(c) Disbursement of Monies—Committee Expenses: Unless the Division Chief is satisfied that the monies to be loaned will be equitably distributed to and among the owners of the Deposited Securities, in proportion to the loan value of the securities they have respectively deposited, the Owners' Agents shall submit to the Division Chief such statements of their expenses and of the compensation which they propose to pay to depositories, committee members and others, as he may require. If the Division Chief shall notify such Agents in writing that he disapproves of any such expenditures and if such Agents fail to procure such reductions in said charges as he may require, the aforesaid loan shall not be consummated.

(d) Legal Proceedings: Unless Counsel for this Corporation and the Division Chief shall be satisfied with all resolutions and proceedings incidental to the authorization and issue of any New Bonds and the Deposited Securities, with the security therefor and

with all proceedings connected with the acquisition of such obligations by this Corporation the pledging of Deposited Securities to this Corporation, the Exchange of New Bonds therefor and the cancellation of Old Securities.

(e) Representations: If any representation or statement made to this Corporation in the application for this loan or any supplement or amendment thereof, or otherwise, shall be found to be incorrect or incomplete in any material respect.

(f) Financial Physical Condition: If, in the judgment of the Division Chief, there shall have been any material change in the financial condition of the District or in the physical condition of its properties as theretofore represented to this Corporation.

58 (g) Opinion of Counsel: Unless Counsel for this Corporation shall be satisfied with all opinions rendered by municipal bond counsel as to the validity of and security for, the Deposited Security and the New Bonds.

(h) Satisfactory Performances: Unless all terms and conditions of this resolution and of Section 36, Part 4, of the Emergency Farm Mortgage Act of 1933, as amended, shall have been complied with to the satisfaction of the Division Chief and of Counsel for this Corporation.

Further Resolved, that if the Division Chief shall so request, counsel for the Corporation shall prepare any contracts or agreements not inconsistent with this Resolution, setting forth the terms and conditions under which the aforesaid loans, advances or exchange are to be effected and when any such contracts or agreements shall have been approved by the Division Chief, and by Counsel designated for that purpose by

the General Counsel for this Corporation, the Treasurer of this Corporation is authorized and directed to execute the same and in the name and on behalf of this Corporation.

Further Resolved, that when said District, Owners' Agents and consenting Owners have complied with the provisions, terms and conditions of these Resolutions and of any contracts that may have been executed by the Corporation in this matter to the satisfaction of the Division Chief and of the designated counsel for this Corporation, the Treasurer of this Corporation is authorized and directed to execute all such instruments, make all loans, payments and exchanges of securities and take any other action so approved by the Division Chief and by said Counsel.

Further Resolved, that the Secretary of this Corporation is hereby authorized and directed to forward a certified copy of these resolutions to the District.

59 I, C. R. Cooksey, Secretary of the Reconstruction Finance Corporation do hereby certify that the foregoing is a true and correct copy of the Resolutions of its Executive Committee, duly appointed at a meeting thereof regularly convened and held on the 6th day of January, 1914, at which a quorum was present and acting throughout.

In Witness Whereof I have hereunto set my hand and seal of this Corporation this 13th day of January, 1934.

(Signed) "C. R. COOKSEY,"
(Seal) Secretary.

60 EXHIBIT "B".

P. 1.

(Form—1/22/34.)

Meeting of April 2, 1934.

Certified Copy of Resolution.

Adopted by Board of Directors of Cameron County Water Improvement District Number One.

P. O. Address, Harlingen, Texas.

Whereas, the officers of this District have heretofore filed an application with the Reconstruction Finance Corporation asking that a loan be made to or for the benefit of this District for the purpose of enabling it to reduce and refinance certain indebtedness heretofore incurred in connection with its project; and

Whereas, on January 6, 1934, the Reconstruction Finance Corporation authorized a loan of not exceeding $400,000.00 for such purpose subject to the terms and conditions set forth in a resolution adopted by said Reconstruction Finance Corporation on that date; and

Whereas, the Directors of this District have received and examined a certified copy of said resolution and desire to accept the said loan on the terms and conditions therein set forth.

Now, Therefore, be it Resolved, that this—District hereby ratifies and approves the action of its officers in making such application and confirms all statements of fact therein contained and all other facts and representations of fact offered or made by its officers and

representatives to the Reconstruction Finance Corporation in support of such application.

Further Resolved, that this District accept such loan and for that purpose hereby assents and agrees to all the terms and conditions of said resolution so adopted by the Reconstruction Finance Corporation and agrees that it will faithfully do and perform all things on its part to be done thereunder.

61 Further Resolved, that the officers of this District be and they hereby are authorized and directed to do all acts and things necessary, proper or convenient in order to comply with and carry out all of the terms and conditions of said resolution and the Secretary of this District is directed to forward a certified copy of this resolution to the Chief of the Drainage, Levee and Irrigation Division of said Reconstruction Finance Corporation.

The undersigned, being the duly elected Secretary of the aforesaid District, hereby certifies that the foregoing is a true and correct copy of a resolution adopted by its Board of Directors at a meeting thereof duly and lawfully held on the 2nd day of April, 1934, and duly recorded in pp. 69 and 70, Volume 7 of the minutes of Cameron County Water Improvement District Number One.

(Signed) H. L. STARNES, Secretary.
(Official Seal.)

62 V.

That after receiving a certified copy from the Reconstruction Finance Corporation authorizing a loan to your petitioner which would enable it to readjust its bonded debt on the basis of 49.8 cents upon each dollar of principal, it immediately sent out circular letters to its bondholders setting out the terms of such

proposed plan of readjustment, the first of said letters being sent out about February 1, 1934, and attached to your petitioners original petition as an exhibit, and an additional circular letter being sent out on May 1, 1934, in addition to other communications to said bondholders, and along with said circular letters to said bondholders, a Power of Attorney was sent by which the bondholders could deposit their bonds under the readjustment plan, each bondholder agreeing, by executing said Power of Attorney, or deposit letter, to accept the refinancing plan of the district, namely 49.8 cents on each dollar principal in cash; when a sufficient number of said bonds were deposited, or when a sufficient number of the bondholders assented to the refunding plan to authorize the Division Chief of the Reconstruction Finance Corporation to make payment of the same in cash, said deposit letter authorizing the trustee designated therein to hold title to the bonds and present them for payment under the readjustment plan and making said trustee their agent to dispose of the bonds for cash at 49.8 cents under the refunding plan and to look to the trustee for payment thereof, a copy of said circular letter of May 1, 1934, being attached hereto and marked Exhibit "C" for identification and specimen of said Power of Attorney, or deposit letter, being attached hereto and marked Exhibit "D" for identification; that your petitioner sent copies of said plan of readjustment and said Powers of Attorney, or deposit letters, to all known bondholders and to the last known address of all bondholders, on or about February 1, 1934, and on or about May 1, 1934.

63 EXHIBIT "C".

P. 1.

Cameron County Water Improvement District Number One.

Harlingen, Texas.

Fiscal Agents:
Bain, Emerson & Company,
National Bank of Commerce Bldg.,
San Antonio, Texas.

May 1, 1934.

To Holders of:
Cameron County 6% Irrigation District Number One Bonds.
Cameron County 6% Water Improvement District Number One Bonds.

Cameron County Water Improvement District Number One has finally succeeded in arranging a loan from the Reconstruction Finance Corporation to be evidenced by Refunding Bonds of said District. This proposed loan is in such amount and subject to such conditions as will enable the District to retire its outstanding Eight Hundred and Two Thousand and No/100 ($802,000.00) Dollars of Cameron County Irrigation District Number One Bonds and Cameron County Water Improvement District Number One Bonds by payment therefor of an amount equal to forty-nine and eight-tenths per cent (49.8%) of the par value thereof, which amount will be paid in cash at the time of delivery of the Bonds.

The said District, accordingly, subject to the deposit of sufficient bonds by the Holders thereof to effect the sale of its Refunding Bonds as aforesaid and to warrant in the opinion of the Reconstruction Finance Cor-

poration the consummation of such sale and the retirement of Bonds as hereby contemplated, offers to pay and retire the said Bonds by payment of an amount equal to forty-nine and eight-tenths per cent (49.8%) of the principal value thereof in cash upon the delivery of the Bonds with all unpaid interest coupons attached.

64 Inasmuch as conditions within the said District due to the depression and to certain storms, hurricanes and disastrous freezes make it appear to the advantage of Holders of said Bonds to deposit them in accordance with the terms of the Power of Attorney attached hereto in order that such Holders may obtain a reasonable cash settlement for their Bonds, and inasmuch as in the event sufficient bonds are not deposited in accordance with the terms of the Power of Attorney attached hereto within a very limited time as to warrant in the opinion of the Reconstruction Finance Corporation the consummation of the sale of the said Refunding Bonds and the retirement for cash of the existing Bonds as contemplated hereby the opportunity of the Holders of said Bonds to realize the cash amount herein offered may be lost, all such Holders are requested to execute the Power of Attorney attached hereto at once and to deposit their Bonds in accordance with the terms thereof.

In the event any Holder of any of the Bonds desires further information of any nature, such Holder is requested to get in touch promptly with the Fiscal Agents, at their office in San Antonio, Texas, whereupon such information will be furnished at once.

CAMERON COUNTY WATER
IMPROVEMENT DISTRICT
NUMBER ONE.
By H. L. STARNES, Manager.

Your immediate consideration is requested to this offer, as the plan outlined cannot be accomplished without the prompt return of the signed assent.

65 EXHIBIT "D".

P. 1.

Power of Attorney.

Whereas, the Reconstruction Finance Corporation of Washington, D. C. did, on the thirteenth day of January, 1934, pass an order to refund the outstanding bonded indebtedness of Cameron County Water Improvement District Number One, which indebtedness includes the outstanding bonds issued by Cameron County Water Improvement District Number One, and or Cameron County Irrigation District Number One, Harlingen, Texas.

Whereas, said bonds must be assembled so that they can be presented to the Federal Reserve Bank in San Antonio, Tex., designated by the Reconstruction Finance Corporation as the place of final payment, and,

Whereas, the order further provides that the Reconstruction Finance Corporation will pay 49.8 cents for each dollar of the principal of the bonds deposited, on this call—which must be done promptly. all bonds shall be accompanied by All Unpaid Interest Coupons, and further provides that said Corporation shall pay 47.8 cents on each dollar for the bonds which are subsequently deposited after the time fixed by the Division Chief, and said bonds must also be accompanied by all unpaid interest coupons.

Therefore, I, the undersigned, the owner of the following bonds:

Bond No.	Maturity Date.	Amount of Bond.	All Coupons Attached Due Oct. 1st, 1933, and After
		$1,000.00	
627		$1,000.00	
629		$1,000.00	
634		$1,000.00	

do hereby deposit the same with the First National Bank of Harlingen, Texas, or * ..... at ..... and I hereby authorize said Bank to act as my special agent and deliver
66 the bonds and all attached interest coupons to the Federal Reserve Bank at San Antonio, Texas, under the terms of said order of the Reconstruction Finance Corporation, and to collect from said Federal Reserve Bank the amount provided in said order as mentioned above, and to remit to me the proceeds of same, and I hereby give said Bank all authority that I would have, provided I were there in person, in regard to the exchange of said bonds and the refunding of same.

Witness my hand this 18th day of August, A. D. 1934.

CHRISTINE F. McMILLAN.

Witnesses:

J. F. PAULSEN,
GEO. SIEGFRIED.

* Note: Write in the bank of your choice. Notify the District and the R. F. C. that the bonds are deposited and the amount thereof.

67 VI.

That your petitioner received responses from most of the holders of its bonds and so far as petitioner knows and after diligent search, there are no non-assenting bondholders except the contestants herein and your petitioner had fully complied with the provisions of House Bill No. 5950, above set out, and had on deposit under the terms of the above Power of Attorney, at the time of the filing of this petition, in the First National Bank of Harlingen, the National

Bank of Commerce in San Antonio more than 30% of its bonds and at this time your petitioner has procured more than 66-2 3% of its bonds to be deposited in the First National Bank of Harlingen, Texas, and the National Bank of Commerce in San Antonio, Texas, and other banks approved by the Reconstruction Finance Corporation under the provisions of the above Power of Attorney, who have fully assented to the terms of the readjustment plan, agreeing to accept 49.8 cents for their bonds, and a large number of other bondholders have fully assented to the plan, but have not executed the formal power of attorney above set out. The total number assenting at this time is approximately $700,000.00 of said bonds and more than 66-2 3% of said bonds have been deposited with a written assent or power of attorney in writing as above set out.

That after filing its First Amended Petition on August 22, 1934, and obtaining an order setting the same down for a hearing from this Honorable Court, your petitioner caused to be published a notice of said hearing in the Bond Buyer of New York City on September 1, 8 and 15, 1934, advising and giving notice to all the holders of said bonds of the hearing on said petition on October 1, 1934, and at said hearing on October 1, 1934, the Court reset said case for December 5, 1934, and the contestants herein, who assert they own $78,000.00 of said bonds, are the only contestants and non-assenting bondholders of petitioner, and petitioner has made diligent search to ascertain the existence of such non-assenting bondholders, if any, and your petitioner believes and alleges it to be a fact that all of the bondholders of said district, except the contestants herein, have assented to the plan and are ready and willing to accept 49.8 cents on each dollar of principal for said bonds, as
68 the same is just and equitable and far in excess of the market value of said bonds, and

in this connection your petitioner would show to the Court that the reasonable and average market value of the bonds of your petitioner at the time the loan was authorized by the Reconstruction Finance Corporation was 35% of their par value, and that when this petition was filed herein, the reasonable market value of said bonds, as well as the current market value was 40% of their par value and that the reasonable market value of said bonds and current market value of said bonds does not exceed 45% of their par value at this time and your petitioner has been offered large blocks of said bonds in the market at 42% of their par value within the last 30 days and the readjustment plan offered by your petitioner would be just and equitable to the bondholders, as said payment would be in cash and is more than their current market value and is their reasonable value and said bondholders, if they so desire, can purchase securities of superior quality with the proceeds from said bonds and the money said bondholders would receive from the sale of said bonds to the Reconstruction Finance Corporation would have purchasing value equal to or in excess of the original purchase price which the present bondholders paid for said bonds at the time such purchases were made and said readjustment plan is to the best interests of the district, because it would enable the district to reduce its taxes for bond purposes to approximately one-third of the present levy, as the Reconstuction Finance Corporation is willing to accept refunding bonds at their par value, bearing 4% interest for the loan above mentioned.

VII.

Your petitioner would further show that it had 30% of said bonds on deposit at the time of the filing of this petition under Powers of Attorney, as above set out, and at this time more than 66-2 3% of its bonds

have been deposited under the readjustment plan and assents in writing to the district given thereon, a list of said bonds which has been deposited and written assent or powers of attorney given, are herein set out and marked Exhibit "E" for identification,
69 but the same does not include all the bondholders who have given their assent in writing, as some of them are deposited in banks in other states and it is not convenient to set them out herein at this time, but they will be produced upon a trial of this case.

EXHIBIT "E."

List of Bonds of Cameron County Water Improvement District No. One on deposit, who have signed the Plan and Agreement to refund as given in this Petition. This does not include all of the Bonds signed up for there are more than 66 2/3% having signed up and agreed to the Plan, but a great many of them are held by individuals and Companys and not deposited, and some of the Bonds deposited in Banks are not available for listing at this time, but this list does include more than 30%, as required by law, as follows:

On Deposit in the First National Bank of Harlingen:

No.	Amount	Received from:
873	1,000.00	Chas. Barnard.
874	1,000.00	"
886	1,000.00	"
887	1,000.00	"
888	1,000.00	"
889	1,000.00	"
890	1,000.00	"
907	1,000.00	"
908	1,000.00	"
909	1,000.00	"
627	1,000.00	Christian G. McMillan.

No.	Amount	Received from:
629	1,000.00	Christian G. McMillan.
631	1,000.00	"
1035	500.00	W. Fleishbacher.
209	1,000.00	"
163	1,000.00	"
340	1,000.00	Bank of American National Trust and Savings Association.
342	1,000.00	"
344	1,000.00	"
346	1,000.00	"
348	1,000.00	"
419	1,000.00	"
421	1,000.00	"
423	1,000.00	"
425	1,000.00	"
427	1,000.00	"
734	500.00	Avery Fuller Childrens' Center.
769	500.00	"
770	500.00	"
772	500.00	"
774	500.00	"
776	500.00	"
265	1,000.00	"
283	1,000.00	Mrs. J. B. Maynard.
150	1,000.00	Eva de Gress Loubens.
354	1,000.00	Arthur H. Vincent.
356	1,000.00	"
505	1,000.00	"
626	1,000.00	"
765	500.00	"
786	500.00	"
1031	500.00	Donald S. Hopkins
924	1,000.00	"
925	1,000.00	Donald S. Hopkins
940	1,000.00	"
941	1,000.00	"
113	1,000.00	David F. Selby
809	500.00	Henry P. Linsoln, Trustee

No.	Amount	Received from:
458	1,000.00	Elizabeth C. Kolb.
248	1,000.00	Henry H. Tracy
422	1,000.00	Henry P. Lincoln, Trustee.
424	1,000.00	"
211	1,000.00	Letus N. Crowell
840	500.00	"
592	1,000.00	Dorothea Hager
134	1,000.00	Blanche Trenwith Clinton
136	1,000.00	"
218	1,000.00	Katherine Brown
216	1,000.00	"
296	1,000.00	First Nat'l Bank (Trust & Savings) Chico, California.
298	1,000.00	"
300	1,000.00	"
410	1,000.00	"
412	1,000.00	"
892	1,000.00	Victor G. Berrian.
391	1,000.00	Raegan County, Texas.
393	1,000.00	"
395	1,000.00	"
397	1,000.00	"
389	1,000.00	"
226	1,000.00	The Plym Company
228	1,000.00	"
230	1,000.00	"
232	1,000.00	"
234	1,000.00	"
272	1,000.00	James O'Murph.
582	1,000.00	Louis H. Cromwell.
952	1,000.00	Priscialla F. Alden.
953	1,000.00	"
368	1,000.00	James G. Canby, Jr.
501	1,000.00	George P. McNear.
510	1,000.00	"
512	1,000.00	"
514	1,000.00	"
516	1,000.00	"

No.	Amount	Received from:
518	1,000.00	George P. McNear.
520	1,000.00	"
522	1,000.00	"
524	1,000.00	"
526	1,000.00	"
281	1,000.00	F. T. Favour.
236	1,000.00	Ed. Boehms Sons.
238	1,000.00	"
240	1,000.00	"
362	1,000.00	Wm. G. Griffith.
276	1,000.00	Edwin E. Hagemann.
247	1,000.00	Realty Acceptance Corporation.
249	1,000.00	"
251	1,000.00	"
929	1,000.00	"
930	1,000.00	"
387	1,000.00	Realty Acceptance Corporation.
257	1,000.00	"
895	1,000.00	Wm. P. Hopkins.
898	1,000.00	"
921	1,000.00	"
1023	500.00	"
1024	500.00	"
1030	500.00	"
590	1,000.00	Laura A. W. Dutton.
372	1,000.00	Harry May.
429	1,000.00	Clementine Monet.
431	1,000.00	"
433	1,000.00	"
435	1,000.00	"
437	1,000.00	"
439	1,000.00	"
441	1,000.00	"
443	1,000.00	"
445	1,000.00	"
447	1,000.00	"
449	1,000.00	"
451	1,000.00	"

No.	Amount	Received from:
915	1,000.00	R. L. Hill.
270	1,000.00	"
906	1,000.00	"
905	1,000.00	"
904	1,000.00	"
914	1,000.00	"
964	1,000.00	Lee M. Green.
965	1,000.00	"
966	1,000.00	"
999	1,000.00	"
1015	1,000.00	"
1048	500.00	"
1049	500.00	"
1050	500.00	"
1051	500.00	"
1052	500.00	"
1053	500.00	"
1054	500.00	"
360	1,000.00	"
361	1,000.00	"
374	1,000.00	"
376	1,000.00	"
411	1,000.00	"
413	1,000.00	"
415	1,000.00	"
746	500.00	"
747	500.00	"
761	500.00	"
763	500.00	"
768	500.00	"
748	500.00	Chris Walz.
613	1,000.00	Mr. Sam Botts, Trustee.
103	1,000.00	"
129	1,000.00	"
131	1,000.00	"
133	1,000.00	"
135	1,000.00	"
137	1,000.00	"

No.	Amount	Received from:
139	1,000.00	Mr. Sam Botts, Trustee.
141	1,000.00	"
143	1,000.00	"
145	1,000.00	"
147	1,000.00	"
878	1,000.00	"
881	1,000.00	"
882	1,000.00	"
738	500.00	"
740	500.00	"
289	1,000.00	"
123	1,000.00	"
872	1,000.00	"
127	1,000.00	"
380	1,000.00	"
382	1,000.00	"
384	1,000.00	"
386	1,000.00	"
388	1,000.00	"
390	1,000.00	"
392	1,000.00	"
394	1,000.00	"
396	1,000.00	"
398	1,000.00	"
400	1,000.00	"
402	1,000.00	"
404	1,000.00	"
406	1,000.00	"
408	1,000.00	"
785	500.00	"
787	500.00	"
789	500.00	"
791	500.00	"
1059	500.00	"
1060	500.00	"
1061	500.00	"
1062	500.00	"
1063	500.00	"

No.	Amount	Received from:
1064	500.00	Mr. Sam Botts, Trustee.
1065	500.00	"
500	1,000.00	"
636	1,000.00	"
637	1,000.00	"
830	500.00	"
832	500.00	"
834	500.00	"
836	500.00	"
838	500.00	"
842	500.00	"
996	1,000.00	"
997	1,000.00	"
998	1,000.00	"
682	500.00	"
128	1,000.00	"
130	1,000.00	"
132	1,000.00	"
122	1,000.00	"
883	1,000.00	"
124	1,000.00	"
154	1,000.00	"
156	1,000.00	"
158	1,000.00	"
165	1,000.00	"
167	1,000.00	"
169	1,000.00	"
171	1,000.00	"
181	1,000.00	"
183	1,000.00	"
1026	500.00	"
1027	500.00	"
876	1,000.00	"
287	1,000.00	"
720	500.00	"
722	500.00	"
826	500.00	"
828	500.00	"

No.	Amount	Received from:
1002	1,000.00	Mr. Sam Botts, Trustee.
1003	1,000.00	"

$71,500 owned by R. T. Stewart of Oklahoma City, Oklahoma, and the Mid-Continent Life Insurance Company of Oklahoma City, Oklahoma. The numbers of the Bonds are not given.

$14,000 of Bonds owned by Wheeler County, the numbers not given.

No.	Amount	Received From	Where Deposited.
263	1,000.00	American Genl. Ins. Co., Houston, Texas.	Nat'l Bank of Commerce, Houston, Texas.
263	1,000.00	American Gen'l Ins. Co., Houston, Texas.	Nat'l Bank of Commerce, Houston, Texas.
262	1,000.00	"	"
264	1,000.00	"	"
716	500.00	"	"
775	500.00	"	"
216	1,000.00	F. H. Brown, Nebraska, Apts., Brownsville, Tex.	1st Nat'l Bank of Harlingen, Texas.
218	1,000.00	"	"
424	1,000.00	S. C. Crowell, Turlock, California.	Nat'l Bank of Turlock, Turlock, California.
932	1,000.00	"	"
507	1,000.00	"	"
509	1,000.00	"	"
511	1,000.00	"	"
876	1,000.00	First National Bank, Kalamozoo, Michigan.	First National Bank, Kalamazoo, Michigan.
877	1,000.00	Mary C. Lewis, Houston, Texas.	State National Bank, Houston, Texas.

803	500.00	C. J. Moore, Brown-Crummer Company, Dallas, Texas.	Brown-Crummer Company, Kirby Bldg., Dallas, Tex.
807	500.00	"	"
808	500.00	"	"
638	1,000.00	"	"
639	1,000.00	"	"
640	1,000.00	"	"
641	1,000.00	"	"
642	1,000.00	"	"
643	1,000.00	"	"
644	1,000.00	"	"
645	1,000.00	"	"
224	1,000.00	Fayetteville State Bank, Fayetteville, Texas.	Farmers State Bank, Fayetteville, Texas.
222	1,000.00	"	"
177	1,000.00	"	"
175	1,000.00	"	"
173	1,000.00	"	"
473	1,000.00	Slavonic Benevolent Order of Texas, Fayetteville, Texas.	Farmers State Bank, Fayetteville, Texas.
475	1,000.00	"	"
490	1,000.00	Union National Bank, Wichita, Kansas.	Union National Bank, Wichita, Kansas.
492	1,000.00	"	"

No.	Amount	Received From	Where Deposited
494	1,000.00	Union National Bank, Wichita, Kansas.	Union National Bank, Wichita, Kansas.
496	1,000.00	"	"
498	1,000.00	"	"
252	1,000.00	"	"
—	4,000.00	Joseph A. Mullen.	South Texas Commercial National Bank, Houston, Texas.
—	36,000.00	Neughbirs of Wooderaft.	Federal Reserve Bank, San Antonio, Texas.
162	1,000.00	James Davis.	4th National Bank, Wichita Kansas.
164	1,000.00	"	"
202	1,000.00	"	"
204	1,000.00	"	"
206	1,000.00	"	"
278	1,000.00	"	"
280	1,000.00	"	"
282	1,000.00	"	"
440	1,000.00	"	"
442	1,000.00	"	"
—	2,000.00	F. F. Foote.	Northern Tr. Co., Chicago, Illinois.

875	1,000.00	C. N. Flint.	Security First Nat'l Bank, Los Angeles, Cali.
871	1,000.00	"	"
885	1,000.00	"	"
891	1,000.00	"	"
1022	500.00	"	"
1025	500.00	"	"
508	1,000.00	J. R. McMillan.	Oakland, California.
513	1,000.00	"	"
515	1,000.00	"	"
517	1,000.00	"	"
835	500.00	Mrs. Alice H. Cobert.	Farmers & Merchants Savings Bank, Oakland, Cal.
254	1,000.00	Concho County, Texas.	
258	1,000.00	O. L. Sims Co.	Paint Rock, Texas.
261	1,000.00	"	"
172	1,000.00	O. J. Wintermon.	Union Nat'l Bank, Houston, Texas.
74	1,000.00	"	"
76	1,000.00	"	"
78	1,000.00	"	"
246	1,000.00	"	"
250	1,000.00	"	"

No.	Amount	Received From	Where Deposited.
399	1,000.00	O. J. Wintermon.	Union Nat'l Bank, Houston, Texas.
417	1,000.00	"	"
462	1,000.00	"	"
704	1,000.00	"	"
724	1,000.00	"	"
771	1,000.00	"	"
773	500.00	"	"
780	500.00	"	"
784	500.00	"	"
844	500.00	"	"
850	500.00	"	"
846	500.00	"	"
448	500.00	"	"
566	1,000.00	F. F. Madden.	
570	4,000.00	"	
468	4,000.00	"	
572	4,000.00	"	
688	500.00	A. F. Brieling.	Bank of America, Healdsburg, Cali.
690	500.00	A. F. Brieling.	Bank of America, Healdsburg, Cali.

573	1,000.00	Jas. Goldstone.	Alamo National Bank, San Antonio, Texas.
575	1,000.00	"	"
799	500.00	"	"
801	500.00	"	"
460	1,000.00	"	"
438	1,000.00	Leo W. Goldstone	Alamo National, San Antonio, Texas.
797	500.00	"	"
795	500.00	"	"
777	500.00	"	"
220	1,000.00	Bell County, Texas.	National Bank of Commerce, San Antonio, Texas.
229	1,000.00	"	"
231	1,000.00	"	"
233	1,000.00	"	"
235	1,000.00	"	"
519	1,000.00	"	"
579	1,000.00	"	"
650	1,000.00	"	"
837	500.00	"	"
329	1,000.00	J. R. Reese.	Kansas State Bank, Newton, Kansas.
367	1,000.00	"	"

No.	Amount	Received From	Where Deposited.
338			
739			
496			
767			
521			
523			
525			
529	$14,000	Carr Maroney & Company.	Frost National Bank.
559			
563			
565			
569			
591			
790			
792			

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VIII.

Your Petitioner alleges that no fees or compensation or allowance for attorneys, agents or committees have been agreed upon or assessed against said District or will be paid out of the revenues received from said funds.

IX.

Your Petitioner alleges that the plan offered the creditors is fair and equitable and for the best interests of the creditors, does not discriminate unfairly in favor of any class of creditors, complies with the provisions of this law and has been accepted and approved by the number of creditors required by law, and that said plan is offered in good faith, and will be a great saving to your Petitioner and to its farmers.

X.

Your Petitioner further alleges that the indebtedness of this district is divided into classes, and each class has a different kind of security; that one class might be styled as the employees or workmen necessary to carry on the business of this applicant and supply water to the farmers with efficiency. That this class of people is paid every fifteen days, and would be in no way affected by this Petition. That the approximate amount due them is only a small sum since they were paid on the third Monday in this month, the same being Dec. 3rd; and the indebtedness to them is practically nothing. The indebtedness to other parties is as follows:

$24,000.00 par value of 7 per cent notes, payable serially and payable to bearer, but sold to Brown-Crummer, Wichita, Kansas. These notes are for im-

provements and are in no way involved in the present readjustment, and the security is entirely different, they being secured by a pledge of a part of the Flat Rate annually until the notes are fully paid.

In addition, the District owes the following notes:

W. H. Maupin, Harlingen, Texas	$2,500.00
Taylor Lumber Company, Harlingen, Texas	1,288.77
Mrs. R. Starnes, Harlingen, Texas	3,306.36
First National Bank, Harlingen, Texas...	5,000.00
V. & G. Construction Company,	
78 Harlingen, Texas	159.92
A. W. Armstrong, Harlingen, Texas	5,607.46
G. C. Howell, Blue Bonnett Hotel, San	
Antonio, Texas	10,000.00
R. L. Ware, Harlingen, Texas	12,000.00
Mrs. K. Brown, Brownsville, Texas.....	18,510.49
Mrs. M. Engelbrecht	1,249.74
A. Foltz, Harlingen, Texas	10,000.00

That all of the above sums were borrowed because of the depression and each one of them is secured differently, and are in a different class from the bond holders,—being secured out of flat rates or assessments collected by the District and are not affected by the refunding order in no way.

Wherefore, premises considered, your petitioner prays the Court that upon final hearing that this plan of readjustment of its bonded debt be confirmed under the provisions of the bankruptcy laws of the United States and particularly the provisions of the municipal bankruptcy law above referred to and that this Honorable Court enter its order on final hearing compelling the non-assenting bondholders who constitute less than 10% of the bonded indebtedness of your petitioner and particularly the contestants herein be required to accept the provisions of the readjustment plan of the district, which readjustment plan is

similar to a composition of the creditors; and that your petitioner have such other and further relief, legal and equitable, both in law and in equity to which it may show itself entitled to receive and for which it will ever pray.

GREENWOOD & LEWIS,
By W. B. LEWIS,
Attorneys for Petitioner.

State of Texas,
County of Cameron.

Comes now H. L. Starnes, Manager of the Board of Directors of Cameron County Water Improvement District Number One, petitioner herein, who states on oath that he has read the above and foregoing petition and that the allegations of fact contained therein are true and correct to the best of his knowledge and belief and that said Second Amended Original Petition, as well as the original and First Amend-
79 ed Original Petition, filed herein, were filed pursuant to an order of the Board of Directors of said District passed and entered in the minutes of said District on the 1st day of June, 1934.

H. L. STARNES, Affiant.

Sworn and Subscribed to before me this 5 day of December, 1934.

W. B. LEWIS,
(Seal) Notary Public, Cameron County, Texas.

CONTEST TO PETITION AND MOTION TO DISMISS.

80 Filed October 1, 1934.

(Title Omitted.)

Now come C. E. Ashton of Harris County, Texas, J. W. Terry of Galveston County, Texas, individually

and as trustee for Rebecca Terry White, C. W. Griffin, A. G. Griffin and L. E. Wood of San Francisco County, California, and West Coast Life Insurance Company, a corporation, creditors of Cameron County Water Improvement District No. One of Harlingen, Texas, owning more than five per cent (5%) in amount of the indebtedness of said District, affected by the proposed plan of reorganization set out in the petitioner's petition and file this contest of the facts alleged in petitioner's petition and move the Court to dismiss said petition as being insufficient in law and in fact for the following reasons, to-wit:

1.

The petition is insufficient because it does not show that thirty per cent (30%) of the bondholders have accepted the plan, the general allegation to that effect being insufficient.

2.

It appears from the petition that petitioner has not made a reasonable effort to ascertain the names and residences of two-thirds of the bondholders, which petitioner generally alleges have accepted the plan.

3.

The Court is without jurisdiction and the petition does not show cause for relief because there is no provision in the Constitution of the United States
81 which authorizes Congress to pass the Act as applied to this case, and since this is not a proceeding in bankruptcy as contemplated by the clause in the Constitution of the United States which gives Congress the authority to pass uniform laws regulating the subject of bankruptcy.

4.

This Court is without jurisdiction over the proceedings and the petition filed herein does not show any cause for relief because the Act purporting to authorize these proceedings operates to deprive these contestants of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

5.

The petition is insufficient because the Legislature of Texas prior to the filing of the petition had passed no act which would authorize the petitioner herein to accept the benefit of or proceed under the Act of Congress relied on.

6.

Even if the Act of the Legislature of Texas passed since the filing of this petition be held applicable, the same is unconstitutional and void in that the Legislature of the State of Texas has no authority to confer jurisdiction on Congress or on this Court, and it cannot surrender to Congress any of its powers, or enlarge the authority of Congress by undertaking to consent thereto and because further no one state by its consent may enlarge the authority of Congress over this or any subject or delegate its authority to Congress, and because additional authority cannot be conferred upon Congress by any one state, but only by an amendment to the Constitution, as therein provided.

7.

Any attempt of the Legislature of the State of Texas to confer additional authority as applied to this

subject on Congress, or authorize the acceptance of the act relied on by the petitioner, would in legal effect impair the obligation of the contracts evidenced by the bonds and authorized by the Constitution and Statutes of the State of Texas. Any such
82 attempt of the Legislature would violate that provision of the Constitution of the United States which prohibits the states from impairing the obligation of contracts.

7.

Any Act of the Texas Legislature empowering the petitioner in this cause to take advantage of the Act of Congress would be in excess of the powers granted to the Legislature of the State of Texas by the Constitution of Texas and would be in contravention of the express limitation placed upon the Legislature of Texas by the Constitution of Texas, to-wit, prohibition against the impairment of contracts and guaranty that no one person shall be deprived of its property without due process of law.

8.

It appears upon the face of petitioner's petition that the proposed plan of reorganization is dependent upon the securing of funds from the Reconstruction Finance Corporation for the purpose of refunding the bonded indebtedness of the petitioner and that the petitioner is engaged solely in the development and operation of an intrastate project confined to the boundaries of the State of Texas and of a single county thereof, so that the project is beyond the scope of powers of the Federal Government or of any federal agency and particularly the Reconstruction Finance Corporation, which is only authorized to advance funds to projects of an interstate character and the Act purporting to

authorize the Reconstruction Finance Corporation to advance funds to districts such as petitioner herein is, therefore, not authorized by the constitutional grants of power to the Congress of the United States.

9.

These contestants now controverting facts alleged in the petition, in order to show that they own five per cent (5%) of the outstanding bonds of the petitioner, allege that they each own bonds as
83 follows:

C. L. Ashton of Harris County, Texas, owns bonds of par value of	$5,000.00
J. W. Terry of Galveston County, Texas, owns bonds of par value of	10,000.00
J. W. Terry as Trustee for Rebecca Terry owns bonds of par value of	5,000.00
C. W. Griffin of San Francisco County, California, owns bonds of par value of	5,000.00
A. G. Griffin of San Francisco County, California, owns bonds of par value of	5,000.00
L. E. Wood of San Francisco County, California, owns bonds of par value of ...	2,000.00
West Coast Life Insurance Company, a corporation, owns bonds of par value of	46,500.00
Total	$78,500.00

11.

Contestants admit the allegations in paragraph I of the petition save and except the allegation that Public Bill Number 251 of the 73rd Congress, H. R. 5950, is in full force and effect, which allegation is denied.

12.

Contestants admit the allegations contained in paragraph II of the petition.

13.

Referring to the allegations in paragraph III of the petition, contestants deny that petitioner is insolvent and unable to meet its debts in so far as such allegation applies to the bonds of petitioner, and contestants herein show that taxes heretofore levied to pay the interest and retire bonds as the same mature would be amply sufficient for that purpose were they collected and that the taxes which hereafter can be assessed, levied and collected will be amply sufficient for such purpose in the future.

Contestants herein allege that the property in said District subject to taxation is of the value
84 of not less than Ten Million Dollars ($10,000.00); that said property is assessed for taxation at not less than Six Million Three Hundred Twenty-five Thousand Dollars ($6,325,000); that said district has a population of about twenty thousand (20,000).

Contestants herein show that the rate of tax which can be levied to provide for interest on the bonds and payment of the principal as the same mature is unlimited: that the rate of tax now levied to provide principal and interest on the bonds is $1.20 on the $100 of the assessed value; and that if such rate does not provide sufficient funds to enable petitioner to pay its debts it should be increased.

Contestants aver that as late as February 23, 1933, said District by its officer and manager signed a state-

ment showing that the District was in a solvent condition; that the District paid the interest on the bonds to and including April, 1933. Contestants aver that if the District has been without funds since then to pay the interest on said bonds, it is because the officials of the District have failed to enforce the collection of taxes; that the inability of the petitioner to pay the interest on the bonds is due to its own neglect to collect taxes for the Government has delegated to it the matter of collecting taxes from the property owners of said District; and such taxes are a first lien on all of the property in said District and that this is not a proper test of insolvency; otherwise any District could make itself insolvent and thereby apply for a fifty per cent reduction in its indebtedness merely by not collecting its taxes.

Contestants are informed and aver accordingly that the assessed value of the land in said District is $156 per acre, and the average value of the land is $350 per acre; that the total bonded indebtedness per acre is not more than $18.77, and that there are under cultivation in said District 38,376 acres. The
85 acreage in said District subject to tax is 40,549 acres. Herein contestants specifically deny that petitioner is insolvent or unable to meet its debts as they mature.

Contestants admit that economic conditions have rendered the payment of taxes and debts by the farmers of Cameron County Water Improvement District No. One difficult; but deny that such payment will in the future be impossible, and further deny that any such condition as is required by Section 80, Chapter LX of House Bill 5950 has been created in Cameron County Water Improvement District No. One.

14.

Contestants admit the allegations of paragraph IV except the allegations in the second paragraph thereof

that the District became unable and has become unable to pay its maturing indebtedness and that said District is within the provisions of Section 80 of H. B. 5950, which allegation is denied.

15.

Referring to paragraph V of the petition, contestants are without information necessary to specifically answer the same, and they therefore demand proof that the Reconstruction Finance Corporation decided that it would be a fair proposition to pay the bondholders 49.8c on each dollar of principal, and herein contestants aver that if the Finance Corporation did make such a decision it was ex parte and without giving contestants, either or any of them, an opportunity to be heard. Contestants aver that if any such decision was made by the Finance Corporation, that the same is without due regard to the facts and is inequitable and unjust to these contestants, and is of no force and effect in this proceeding.

Contestants are without information as to the efforts made by petitioner and negotiations with Reconstruction Finance Corporation set out in paragraph V, and are without information as to any agreement reached between said District and the Reconstruction Finance Corporation.

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16.

Referring to paragraph VI of the petition, contestants are without information to answer same specifically and, therefore, demand proof that the loan mentioned therein was made by the Finance Corporation, and herein aver that if it was made or agreed to, such making or agreement was illegal because the Finance Corporation was without authority to make such a loan without first having shown to it that two-thirds of the bondholders had agreed to accept 49.8c on

the dollar of the principal of the bonds, and allege that it was not shown to such Corporation that any such consent had been made by two-thirds of such bondholders.

17.

Referring to paragraph VII of the petition, contestants are without adequate information to answer the same and demand strict proof that thirty per cent (30%) of the bondholders accepted the plan before the filing of the petition.

18.

Referring to paragraph VIII of the petition, contestants are without sufficient information to answer the same and demand proof that 66-2/3 per cent of the bondholders have accepted or will accept the plan.

19.

Referring to paragraph IX of the petition, contestants adopt the answer thereto which they have made to paragraph VII.

20.

Referring to paragraph X of the petition, contestants are without information as to the allegations made and allege that petitioner has not used due diligence to ascertain or reveal the names and residences of the bondholders who have made written acceptances of the plan.

21.

Contestants are without information as to the allegations contained in paragraph XI of petitioner's petition.

87 21.

Referring to paragraph XII of the petition, contestants deny that the plan offered is fair and equitable

and for the best interest of the creditors and does not discriminate unfairly in favor of any class of creditors and complies with the provision of this law. With regard to the other allegations in the said paragraph, contestants are without knowledge and demand strict proof of same.

22.

Referring to paragraph XIII of the petition, contestants are without information to answer the same specifically and therefore demand strict proof thereof.

23.

Referring to paragraph XIV of the petition, contestants are without information to answer the same and demand strict proof thereof, and herein contestants allege that these contestants, and no one of them, have ever accepted this plan.

24.

Referring to paragraph XV of the petition, contestants are without information to answer the same, and therefore demand strict proof thereof.

In Consideration Whereof, contestants pray that petitioner's petition be dismissed.

Respectfully submitted,

W. P. HAMBLEN,
Attorney for C. L. Ashton,
JOYCE COX,
Attorney for J. W. Terry, individually and as trustee for Rebecca Terry,
BAKER, BOTTS, ANDREWS & WHARTON,
By PALMER HUTCHESON,
Attorney for C. W. Griffin, A. G. Griffin, L. E. Wood and West Coast Life Insurance Company, a corporation.

88 The State of Texas,
County of Harris.

Now comes, W. P. Hamblen, attorney for C. L. Ashton, who states on oath that he has read over the above contest and the same is true and correct to the best of his knowledge and belief; also J. W. Terry, individually and as trustee for Rebecca Terry White, who states on oath that he has read over the above contest and the same is true and correct to the best of his knowledge and belief; and also appears Palmer Hutcheson, attorney for C. W. Griffin, A. G. Griffin, L. E. Wood and West Coast Life Insurance Company, who states on oath that he has read over the above contest and the same is true and correct to the best of his knowledge and belief.

J. W. TERRY,
W. P. HAMBLEN,
PALMER HUTCHESON.

In Testimony Whereof, witness my hand and official seal of office, this first day of October, A. D. 1934.

L. C. MASTERSON,
(Seal) Clerk, U. S. Dist. Court, So. Dist. Texas.

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89 OPINION OF THE COURT.

Filed Dec. 1, 1934.

(Title Omitted.)

A. L. Montgomery, of San Benito, Texas, and Greenwood & Lewis and W. B. Lewis, of Harlingen, Texas, for Petitioner.

W. P. Hamblen, Baker, Botts, Andrews & Wharton, and Palmer Hutcheson, of Houston, Texas, and Joyce Cox, of Galveston, Texas, for Contestants.

December 1, 1934.

KENNERLY, District Judge:

Cameron County Water Improvement District No. One (referred to for convenience as Petitioner) filed

in this Court, July 17, 1934, its Petition, and August 22, 1934, its Amended Petition, seeking readjustment of its outstanding Bonds, under the Act of Congress of May 24, 1934, relating to the Emergency Temporary Aid of Public Debtors, and Amendatory of the Bankruptcy Act of July 1, 1898 (Sections 301, 302 and 303, Title 11, U. S. C. A.) The petition
90 was set for hearing for October 1, 1934, and on that date, C. L. Ashton, J. W. Terry, individually and as Trustee for Rebecca Terry White, C. W. Griffin, A. G. Griffin, L. E. Wood, and West Coast Life Insurance Company (referred to for convenience as Contestants), alleging that they owned Bonds of Petitioner aggregating approximately $78,000 (being more than 5% of Petitioner's Bonds outstanding), appeared and filed an Intervention and Contest, thereby, and by their Motion to Dismiss, raising various questions regarding the Constitutionality of such Act of Congress, the Jurisdiction of this Court of such Petition, and the sufficiency of the Petition.

The facts shown by, and fairly deducible from, such Petition are:

(a) While the Petition wholly fails to set forth the time of, manner of, and authority for, the organization of Petitioner as a Water Improvement District, which it claims to be, and fails to set forth clearly the date, manner of issue, number, amount and terms and conditions of the Bonds which Petitioner seeks to have readjusted (and probably should be stricken for indefiniteness in that respect), it appears generally therefrom, from the briefs, and from the Texas Statutes, that Petitioner is an Irrigation District, containing approximately 42,000 acres of land in
91 Cameron County, Texas, in this District and Division, organized under certain Acts of the Legislature of Texas, which were codified as, and are

now, Articles 7622 [1] to 7807, inclusive, of the Texas Revised Civil Statutes of 1925, which Statutes were apparently passed in accordance with Section 52 of Article III, and Section 59a of Article XVI of the Texas Constitution. It further appears that such Bonds were issued, and tax levy or levies made against all property in the District, to provide for the payment of the principal and interest thereon, in accordance with such Statute. And that such tax levies are and constitute liens on and against all such property, which liens still exist and are in full force and effect.

92 (b) Petitioner alleges it has outstanding approximately $800,000 of such Bonds, a part of which are known as Cameron County irrigation District No. One (the former name of Petitioner) Bonds, and part as Cameron County Water Improvement District No. One (the present name of Petitioner) Bonds.

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[1] Article 7622 is as follows:

"Article 7622. Water Improvement Districts Established. The county commissioners' court of any county in this State at any regular or called session thereof may establish one or more water improvement districts in their respective counties, or parts of such districts therein, in the manner hereinafter provided. Such districts may or may not include within their boundaries villages, towns, cities, and municipal corporations, or any part thereof, but no land shall be at the same time included within the boundaries of more than one water improvement district created under this chapter. Such districts when so established may make improvements or may purchase improvements already existing, or may purchase improvements and make additions thereto, and may issue bonds in payment therefor, as herein provided. Such districts being authorized to provide for the irrigation of the land included therein, and when operating under Section 59 of Article 16 of the Constitution, furnish water for domestic, power and commercial purposes. Such districts may be formed for co-operation with the United States under the Federal Reclamation Laws for the purpose of the construction of irrigation works, including drainage works, necessary to maintain the irrigability of the land for the purchase, extension, operation or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. (Acts 2nd C. S., 1919, p. 65, part Sec. 1.)"

(c) That Petitioner has been supplying water for irrigation to farmers in such District for approximately twenty years, and (quoting from the petition):

"That about two and a half years ago the country entered into a general financial depression causing great reduction in the price which the farmers received for their fruits and vegetables; the price being placed at such a low basis that even it did not pay the cost of production, thereby making it impossible for the farmers of said District to pay their Flat Rates and bond tax; and created a condition as described fully in Section 80, Chapter LX of said House Bill Number 5950, mentioned above, and did create such a condition that this Petitioner is insolvent and is unable to meet its debts as they mature, and that this District desires to effect a plan of re-adjustment of its debts as provided by Section 80 above described."

(d) There is no allegation and apparently no claim that an effort has been made by petitioner to collect the tax levied to pay the Bonds. It must be assumed there has been no such effort. There
93 is no allegation and apparently no claim that there has been any loss of, or depreciation in the value of, the property in such District upon which such tax is a lien, and no showing that the full amount of such tax may not be speedily realized and collected by the diligent enforcement by Petitioner of the Law for the collection thereof. The sole claim is that during one or more years of the "financial depression," the price received by farmers for their fruits and vegetables has been below the cost of production, making them unable to pay their "Flat Rates" and "Bond Tax." Whether taxpayers other than farmers are so situated, is not shown. Presumably they are not, or Petitioner would have alleged it.

(e) It is further alleged that Petitioner (italics mine):

"decided that a fair proposition to all concerned would be to pay the bond holders 49.8 cents upon each dollar of principal, which the Reconstruction Finance Corporation agreed to furnish and agreed to loan to the District at four (4%) percent interest instead of six (6%) percent; said proposition being *absolutely satisfactory to Cameron County Water Improvement District Number One, your Petitioner herein.*"

(f) Petitioner alleges that it has written acceptances from holders of more than 30% of the outstanding Bonds, and will upon a hearing have acceptances from holders of 66-2/3% required by such Act of Congress.

94 1. The first inquiry is as to the legal status of Petitioner and of the Bonds in question. That Petitioner, so far as disclosed by its Petition, is merely an Agency or Instrumentality of the State of Texas, created by the State for the purpose of the local exercise of the State's sovereign powers, is clear. The reclamation of arid land by irrigation has long been recognized to be a matter of public interest, for the general welfare, and a governmental function. The property of the District is not private property, but public property. Petitioner is not carrying on private business, but public business.

The Bonds are contracts, constitutionally and statutorily executed by, the State of Texas, through Petitioner, its Local Agency, secured by taxes levied against property in the District, which taxes are secured by liens against such property. Articles 7622 to 7807, inclusive, Texas Revised Civil Statutes. McQuillan Law of Municipal Corporations (Second Edition 1928, Secs. 125 and 135). T. & P. Ry. Co. v. Ward County

Irrigation District No. 1, 112 Tex. 593, 251 S. W. 212. Fallbrook Irrigation District v. Bradley, 164 U. S. 112, 41 L. Ed. 369. Parker v. El Paso County Water Improvement District No. 1, 297 S. W. 737. Robbins v. Limestone County, 114 Tex. 345, 268 S. W. 915. Baker v. Dunning, 77 Tex. 28, 13 S. W. 617.

95 2. The Bonds being obligations of Texas, a Sovereign State, and/or Petitioner, its Agency, does Congress have the power to confer upon this Court jurisdiction to readjust same in the manner set forth in such Act of Congress?

Legal writers, generally, find in the Roman Law the germ of modern Bankruptcy Statutes. There are those, however, who find it in the Mosaic Law at a much earlier date (The System Bible Study, page 200 [2]). Relief by Bankruptcy is some form is provided by the Laws of substantially all civilized countries. In the United States, the Constitution makes provision for such Laws. [3] There have been four Bankruptcy Acts, including the one now in force. The

[2] "Jubille, Year of.—The great semi-centennial epoch of the Hebrews; constituting a festival, and marked by striking public and domestic changes. It was the final consummation of the sabbatical system, according to which every seventh day was a sabbatical day, every seventh year a sabbatical year, and every fiftieth year (i. e., every year following after the close of seven sabbatical periods, each of seven years) a 'jubillee' year, beginning on the Day of Atonement, and ushered in by the blast of trumpets. The principal feature of this jubilee, and one not entirely unknown to other people, was the return of all landed estates, except houses built in walled towers, to the family whose inheritance it originally had been, irrespective of the manner in which it had been alienated. Minor features were the giving up of all pledges, the setting free of all servants, etc. No religious observances were prescribed. For details as given in the Bible, see Lev. 25:8-16, 23-55; 27:16-25." (System Bible Study, page 200).

[3] Section 8, Article I, of the Constitution of the United States: "The Congress shall have power * * * to establish * * * uniform laws on the subject of Bankruptcies throughout the United States; * * *."

96 First Act was passed April 4, 1800 (2 U. S. Stat. at Large 19), and repealed December 19, 1803 (2 U. S. Stat. at Large 248). The Second Act was enacted August 18, 1841 (5 U. S. Stat. at Large 440), and repealed March 3, 1843 (5 U. S. Stat. at Large 614). The Third Act was passed March 2, 1867 (14 U. S. Stat. at Large 517), was amended June 22, 1874 (18 U. S. Stat. at Large 178), and finally repealed September 1, 1878 (20 U. S. Stat. at Large 99). The Law now in force was enacted July 1, 1898 (30 U. S. Stat. at Large 544), and has been frequently amended, February 5, 1903 (32 U. S. Stat. at Large 797), June 15, 1906 (34 U. S. Stat, at Large 267), June 25, 1910 (36 Stat. at Large 838), etc. The Act under discussion (May 24, 1934) is one of five Amendments, passed by Congress during 1933 and 1934,[4] all entirely or to an extent enacted in connection with relief against the financial depression. It contains a declaration of National Emergency:

"There is hereby found, determined, and declared to exist a national emergency caused by increased financial difficulties of many local governmental units, which renders imperative the further exercise of the bankruptcy powers of the Congress of the United States. (July 1, 1898, c. 541, Sec. 78, as added May 24, 1934, c. 345, 48 Stat. 798)."

It is temporary in its nature, expiring two years from May 24, 1934.

97 The fact that it is temporary in its nature is of no consequence if it is contrary to the Federal Constitution. The fact that the Act was enacted during a declared National Emergency does not aid in its construction, nor does it create power in Congress to enact it. National Emergency may furnish the occasion for the exercise of power, if it

[4] Sections 201, 202, 203, 204, 205, 206, 301, 302 and 303, Title 11, United States Code Annotated.

exists, but cannot create the power. Home Building & Loan Association v. Blaidsell, 290 U. S. 426, 78 L. Ed. 423. Travelers' Insurance Company v. Schuyler B. Marshall, ... Tex. ...., ... S. W. .... (decided November 21, 1934).

Nor does an examination of the four Bankruptcy Acts (1800, 1841, 1867 and 1898), and cases [5] construing them, greatly aid.

The leading case under the Act of 1898 (Hanover National Bank v. Moyses, supra), while holding Section 8, Article 1, of the Constitution to be broad in its scope, falls far short of being authority for the view that Congress may confer Jurisdiction upon this Court to readjust, in the manner provided in this Act, Bonds issued by a Sovereign State and or its Agency, and payable out of funds provided by taxation, except by permission of such State. [6] I conclude that
98 Congress has no such power. And that this is true, no matter for what Governmental purpose such Agency may be created. The controling feature is that Petitioner, as shown by its Petition, is an Agency of the State, and one through which the State is exercising its Governmental functions of levying and collecting taxes to pay these Bonds issued and sold to enable Petitioner to perform a Governmental function of irrigating arid lands.

To hold otherwise would be not only to go far beyond the real purpose and meaning of Section 8, Article 1, of the Federal Constitution, but to strike

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[5] Hanover National Bank v. Moyses, 186 U. S. 181, 46 L. Ed. 1113. Hurley v. Devlin, 151 Fed. 919. In re Klein, Federal Case No. 7865. Leidigh Carriage Co. v. Stengel, 95 Fed. 637. In re California Pacific Railway Company, 4 Federal Case No. 2315. 1 Collier on Bankruptcy, 12 Edition 1921. Williams v. United States, Fidelity & Guaranty Co., 236 U. S. 549, 59 L. Ed. 713.

[6] My information is that a Bill giving such permission was introduced at the last Special Session of the Texas Legislature, but passed only one House of the Legislature. Whether under Travelers' Insurance Co. v. Marshall, supra, the Legislature has the power to give such permission is not before me.

down the long recognized rule that under our dual system of government (National and State), one Government may not by its Laws impair the sovereignty of the other. Although the National Government and the State Government exist within the same territorial limits, they act, each in their appropriate sphere, separately and independently, and it is indispensable to their preservation and safety that the sovereignty of each be preserved. As early as 1871, Mr. Justice Nelson, in Buffington v. Day (11 Wall. 113, 78 L. Ed. 126), in discussing the question of the right of the National Government to tax the salary of a
99 State Court Judge, uses this language:

"The Constitution guarantees to the states a republican form of government, and protects each against invasion or domestic violence. Such being the separate and independent condition of the states in our complex system, as recognized by the Constitution, and the existence of which is so indispensable, that, without them, the general government itself would disappear from the family of nations, it would seem to follow, as a reasonable, if not a necessary consequence, that the means and instrumentalities employed for carrying on the operations of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired; should not be liable to be crippled, much less defeated by the taxing power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax. And, more especially, those means and instrumentalities which are the creation of their sovereign and reserved rights, one of which is the establishment of the judicial department, and the appointment of officers to administer their laws. Without this power, and the exercise of it, we risk nothing in saying that no one of the states, under the form of government guaranted by the Constitution could long preserve its existence. A despotic government

might. We have said that one of the reserved powers was that to establish a judicial department, it would have been more accurate, and in accordance with the existing state of things at the time, to have said the power to maintain a judicial department. All of the thirteen states were in the possession of this power, and had exercised it at the adoption of the Constitution; and it is not pretended that any grant of it to the general government is found in that instrument. It is, therefore, one of the sovereign powers vested in the states by their constitutions which remained unaltered and unimpaired, and in respect to which the state is as independent of the general government as that government is independent of the states."

The question of the maintenance of the
100 sovereignty of each government had more frequently arisen and been discussed in cases involving taxation.[7] but the principal is well grounded, and arises, and should be enforced in this case, where Petitioner, an Agency of a Sovereign State, and without permission of the State, is asking that it be relieved of liability for more than 50% of its Bonds.

In Indian Motorcycle Co. v. United States, supra, a distinction is pointed out between an agency of a Sovereign State engaged exclusively in public business, and one engaged wholly or in part in private business. If this distinction exists in a case such as this, which involves the power of Congress under Section 8, of Article 1, of the Federal Constitution, it is not necessary to discuss it here. Here, Petitioner, according to its Petition, is not engaged wholly or in part in private business, but exclusively in public business, and the Bonds which Petitioner is seeking to have readjusted *are payable from funds raised by taxation.*

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[7] Dobbins v. Erie Co., 16 Peters 435, 10 L. Ed. 1022. McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579. Weston v. Charleston, 2 Peters 449, 7 L. Ed. 481. Lane County v. Oregon, 7 Wall. 76, 19 L. Ed. 101. Buffington v. Day, 11 Wall. 128, 20 L. Ed. 126. Willcuts v Bunn, 282 U S. 230, 75 L. Ed. 310. Indian Motorcycle Co. v. United States, 283 U. S. 574, 75 L. Ed. 1281.

101 3. Contestants say that even if the Act of Congress in question is Constitutional, and even if this Court has jurisdiction to administer the affairs of Petitioner under such Act, Petitioner's Petition, upon its face presents a financial situation or setup under which Petitioner is entitled to no relief.

It will be observed that the Texas Statutes under which Petitioner is organized, and under which the Bonds in question were issued, provide for the levy each year of a tax against the property in such District to raise funds to pay the Bonds and interest thereon. While Petitioner does not so state, the fair inference from Petitioner's Petition, and the presumption that Petitioner's officers have done their duty, is that the tax has been levied, the lien securing same fixed against the property in the District, and that under such Statutes, such lien is in full force and effect. As has been pointed out, Petitioner does not claim that the property against which said taxes are a lien no longer exist, or that it has depreciated in value to the extent that a sale thereof will not produce funds sufficient to pay the tax. Neither does the petition state what, if any, effort has been made to collect the tax or to enforce the payment thereof and the lien securing same. Without explanation as to the status of other taxpayers in the District, Petitioner contents itself with the allegation that the farmers in the District, during a period of time not set forth, have been unable to sell their products for an amount sufficient to pay the tax. There being no allegation other than this, there can be no proof other than this. Clear-

102 ly, therefore, Petitioner by its Petition does not present a case authorizing this Court to strike down more than 50% of the face value of the Bonds held by contestants, and require contestants to receive, in full settlement thereof, approximately 49.8% of their face value, when so far as appears from Petitioner's Petition, there may be funds available, or funds may become available, by the slightest diligence

on the part of Petitioner in collecting the tax levied to pay the Bonds in full. Clearly, the Act of Congress, if valid, does not contemplate or authorize a proceeding so unfair and inequitable.

There are many other questions presented which, under this view, I find it unnecessary to discuss. It follows from what has been said that Petitioner's Petition should be dismissed for want of jurisdiction.

Let an order be drawn and presented accordingly.

T. M. KENNERLY, Judge.

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103 ORDER OF DISMISSAL.

Filed Dec. 11, 1934.

(Title Omitted.)

Be It Remembered that on the 11 day of December, 1934, came on to be considered the petition filed herein by Cameron County Water Improvement District No. One seeking readjustment of its outstanding bonds upon the motion to dismiss the said petition of C. L. Ashton, J. W. Terry, individually and as trustee for Rebecca Terry White, C. W. Griffin, A. G. Griffin, L. E. Wood, and West Coast Life Insurance Company, owners of bonds of petitioner aggregating approximately $78,000, being more than five per cent of the total amount of petitioner's bonds outstanding, and came the petitioner by its attorneys of record, and contestants by their attorneys of record, and the Court having considered said petition and the motion to dismiss filed by contestants and the briefs of counsel, and being fully advised in the premises, is of the opinion as set forth in Opinion filed that the Act of Congress under which this proceeding is sought to be maintained is unconstitutional and void, and is further of the opinion that even if said Act is valid the facts alleged in the petition are not sufficient to entitle petitioner to invoke the jurisdiction of this Court there-

under, and that the petition should, therefore, be dismissed for want of jurisdiction.

It is Therefore Ordered, Adjudged and Decreed that the petition filed herein by Cameron County Water Improvement District No. One seeking readjustment of its outstanding bonds be and the same is hereby dismissed for want of jurisdiction, at petitioner's cost. To which action of the Court Petitioner in open Court excepted & gave notice of appeal to the U. S. Circuit Court of Appeals.

104

T. M. KENNERLY,
District Judge.

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105 MOTION FOR NEW TRIAL.

Filed Dec. 18, 1934.

No. 526 In Bankruptcy.

In Re: Cameron County Water Improvement District Number One.

To the Honorable T. M. Kennerly, Judge of said Court:

Comes now Cameron County Water Im-
106 provement District Number One, Petitioner in the above styled and numbered cause and files this its motion for a new trial in this case and respectfully requests this Honorable Court to set aside its opinion rendered herein on December 1, 1934, and judgment entered on December 11th, 1934, and for cause would show the following:

I.

The Honorable Court erred in holding in its opinion above referred to, that the Court did not have juris-

diction to hear and determine this cause, because the statute upon which the proceeding was based was unconstitutional and void, which statute has been heretofore held constitutional by six of the United States District Courts.

II.

That the second amended petition filed herein, with the approval of the Court, on December 5, 1934, fully and completely meets the objections raised to the insufficiency of the petition by the Court in its opinion.

III.

That this Honorable Court erred in holding that your petitioner was created for the purpose of performing "governmental functions," for the reason that the Courts of Texas, as well as the other Courts in the Nation, have uniformly held that the furnishing of water for irrigation was purely a proprietary function, which function is exercised by both private corporations and individuals, and the power to tax conferred upon your petitioner is incidental to its performance of the private or proprietary function of furnishing water for irrigation to the land owners within the corporate limits of the District, the purpose of the District not being primarily to levy and collect taxes, but to furnish water for irrigation, taxation being an incidental power.

107

IV.

That this Honorable Court erred in holding that your petitioner was created for the purpose of performing "governmental functions," since your petitioner was formed for the purpose of furnishing water for irrigation and matters necessary and incidental thereto,

which as a matter of law is a proprietary or corporate function, as the same is only a private benefit to the land owners within the corporate limits of your petitioner and not a benefit to the public generally, which the Courts have held to be purely a proprietary function.

V.

This Honorable Court erred in holding that the furnishing of water for irrigation to the land owners in a defined district, such as your petitioner, is an exercise of the sovereign power of the State of Texas and, therefore, not subject to the bankruptcy powers granted to Congress under Section 8, Article 1 of the Constitution of the United States:

First—Since the furnishing of irrigation to land in a defined district is purely a proprietary or corporate function as distinguished from a governmental function, which functions are performed by both corporate and individual citizens, which citizens, both corporate and individual, of the State of Texas performing the same functions have been held subject to the bankruptcy laws passed by Congress;

Second—That if this Honorable Court were correct in its conclusions that your petitioner is an arm of the Sovereign State of Texas, which is not admitted but expressly denied, the amendment to the bankruptcy law, under which this petition is brought, is not subject to the attack made upon it by the contestants and approved by this Honorable Court in its opinion, for the reason that no creditor or other person can strike down such state agency by a petition in bankruptcy, or otherwise interfere with your petitioner, but the petitioner alone can file such voluntary proceedings which is analogous to other bankruptcy proceedings permitting a composition of creditors and requiring

the minority to be bound by such composition and permitting farmers to file voluntary petitions in bankruptcy and prohibiting creditors from throwing such farmers into bankruptcy.

VI.

This Honorable Court erred in holding that the amendment of the bankruptcy statutes in question impaired the sovereignty of the states or encroached upon the rights of the states since:

First—The act in question is a bankruptcy statute, within the purview of the Constitution, which Constitution is a grant from both the states and the people;

Second—Because the act does not limit or destroy the sovereign powers of the state or agency of the state, but only authorizes certain municipalities, public corporations and local improvement districts, by their own voluntary acts, to take advantage of this exercise of the bankruptcy power.

VII.

This Honorable Court erred in holding that the act in question was unconstitutional, for the reason that the same was not the proper exercise of the bankruptcy power, or a bankruptcy statute, for the reason:

First—That Section 8, Article 1 of the Constitution confers plenary powers upon Congress to pass uniform laws governing bankruptcies;

Second—Because the act merely provides for a composition of creditors upon the agreement to accept a plan of readjustment by at least two-thirds of the

creditors in the case of your petitioner and other local improvement districts created in aid of agriculture, and by 75% of the creditors in the case of certain municipalities, and empowers the Court after issuance of process and hearing, to bind the non-assenting, minority of creditors by such readjustment;

Third—The act is not subject to the attack made upon it by the Court's opinion as an effort upon the part of Congress to exercise power not conferred upon it by the Constitution by reason of an emergency, but on the contrary the same is simply the exercise of a latent or potential power conferred upon Congress by Section 8 of Article 1 of the Constitution to mean an economic emergency.

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VIII.

This Honorable Court erred in holding that the Act in question impaired the sovereignty of the states and that petitioners who are merely funded creditors or bondholders of the district could assert the same, since only the state and the district as an agency of the state would be involved in this encroachment upon the powers of the state, or state agency, and only the state or such agency of the state could assert such right, and contestants in this case could not complain of any lack of permission from the state to take advantage of this statute and authority to initiate or defend any character of litigation is expressly and/or impliedly granted to petitioner in the following particulars:

First—Expressly granted by the Legislature by giving your petitioner the power to sue and to be sued;

Second—Impliedly granted to your petitioner by the Legislature as an incidental power to your petitioner's power to contract.

IX.

This Honorable Court erred in holding that the statute and proceeding in question impaired the obligation of a contract as a matter of law, as that is the purpose of any bankruptcy law, as a matter of fact.

X.

Notice is hereby given that your petitioner intends to file an Amended Motion for a new trial in this cause, as provided in the rules of this Court published on January 1, 1934, unless notice is given by petitioner of a contrary intention.

Wherefore, premises considered, your petitioner prays this Honorable Court to set aside its opinion and judgment heretofore rendered in this cause refusing to take jurisdiction of this case and holding said petition insufficient under the statute and holding said statute unconstitutional, and that this Honorable
110 Court exercise the jurisdiction conferred upon it by Congress herein and determine this cause, and upon final hearing, render judgment as sought in petitioner's Second Amended Original Petition.

Respectfully submitted,
GREENWOOD & LEWIS,
By P. G. GREENWOOD.

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111 PETITION FOR APPEAL.

Filed May 31, 1935.

(Title Omitted.)

To the Honorable T. M. Kennerly, District Judge:

The above named Cameron County Water Improvement District Number One feeling aggrieved by the decree entered and rendered in the above entitled

cause on the .... day of ....., 1935, do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit, for the reasons set forth in the assignments of error filed herewith and said District prays that its appeal be allowed and that citation be issued as provided by law and that a Transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit, under the rules of such Court in such cases made and provided.

And your petitioner prays that proper order relating to the required security to be required of him be made.

CAMERON COUNTY WATER
IMPROVEMENT DIST. No. 1,
By W. B. LEWIS,
Attorney of Record.

Appeal allowed upon giving bond as required by law for the sum of $.....

....., Judge.

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112 ORDER ALLOWING APPEAL.

(Title Omitted.)

On motion of W. B. Lewis, Counsel for the complainant, it is hereby ordered that an appeal to the Circuit Court of Appeals from the decree heretofore filed and entered herein be and the same is hereby allowed and that a certified Transcript of the Record, exhibits, stipulations and all proceedings be forthwith transmitted to said Circuit Court of Appeals and it is further ordered that the bond on appeal be fixed at the sum of $.....

Dated the ..... day of ....., 1935.

.....,
Judge.

113 ASSIGNMENTS OF ERROR.

Filed May 31, 1935.

(Title Omitted.)

Now comes Cameron County Water Improvement District Number One, Appellant in the above entitled cause and files the following assignments of error upon which it will rely upon its prosecution of appeal in the above entitled cause, from the decree made by this Honorable Court on the .... day of ....., 1935, overruling a motion for new trial from an order entered in this Honorable Court on the 1st day of December, 1934.

I.

The United States District Court for the Southern District of Texas erred in granting a motion of the contestants and dismissing the proceedings in this case, because said petition is sufficient both as to facts stated and the law as applied thereto.

II.

The United States District Court for the Southern District of Texas erred in assuming in said opinion that there had been no efforts made to collect taxes and that the sole claim of the District was the financial depression, because the petition states specifically the condition of the farmers of said District and that they are unable to pay their taxes.

III.

The United States District Court for the Southern District of Texas erred in holding that an allegation to the effect that the District was insolvent and unable

to pay its debts as they matured is insufficient, because the sufficiency of this has been decided by the
114 Supreme Court of the United States in the case of Continental Illinois National Bank & Trust Co. v. Chicago, R. I. & P. R. Co., Vol. 79, Law Ed. of the Supreme Court decisions, Page 642, which shows conclusively that the allegations are sufficient to comply with the bankruptcy statute.

IV.

The United States District Court for the Southern District of Texas erred in holding that petitioner is merely an agency, or instrumentality of the State of Texas and business being public, it had no right to take advantage of provisions of the bankruptcy act.

V.

The United States District Court for the Southern District of Texas erred in holding that the bonds being an obligation of Texas, a sovereign state, and petitioner its agency, that Congress had no power to confer upon the District Court jurisdiction to readjust its affairs in the manner set forth in Congress.

VI.

The United States District Court for the Southern District of Texas erred in holding that the act on which applicant filed its petition was contrary to the Federal Constitution of the United States of America and that Congress did not have power to enact it.

VII.

The United States District Court for the Southern District of Texas erred in holding that the act above

mentioned under which applicant filed its petition is void because in that its interferes with the sovereign states and its agency and the same cannot be passed without the permission of the State.

VIII.

The United States District Court for the Southern District of Texas erred in holding that said act was void and unconstitutional, because it impaired
115 the laws of a sovereign state.

IX.

The United States District Court for the Southern District of Texas erred in holding that this District was created for the purpose of performing "governmental functions," for the reason that the Courts of Texas, as well as other Courts of the Nation, have uniformly held that the furnishing of water for irrigation is purely a proprietary function, which may be exercised by both private corporations and individuals and the power to tax conferred upon your petitioner is incidental to its performance of its proprietary function of furnishing water for irrigation of lands.

X.

The United States District Court for the Southern District of Texas erred in its holdings that the act in question impaired the sovereignty of the States, because only the State would have authority to raise this question and the contestants would have no such authority, and since the State and the District do not raise this question, it was an error of the District Court to raise it, and since the Legislature has conferred upon petitioner the right to sue and be sued,

it conferred upon it the right to take advantage of the provisions of this bill.

Wherefore, the appellant prays that said decree be reversed and that the said District Court for the Southern District of Texas be ordered to enter a decree reversing the decision of the Lower Court in said case.

W. B. LEWIS,
Attorney for Appellant.

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117 ORDER ALLOWING APPEAL.

Filed June 1, 1935.

(Title Omitted.)

On this, the 31st day of May, 1935, came on to be heard the Application of the Cameron County Water Improvement District No. One, by its Counsel, W. B. Lewis, Esq., for an Order allowing an Appeal herein from the Decree heretofore entered herein.

It appearing that the Cameron County Water Improvemnt District No. One, after the entry of such Decree seasonably filed with the Clerk of this Court, Motion for Rehearing, which Motion was not brought on for hearing before the Court and was not heard nor decided by the Court, but was pending on May 11, 1935, at the time of the adjournment of the Term of Court at which Decree was entered.

It is Ordered, Adjudged and Decreed that said Appeal be allowed, and the Appeal Bond fixed at the sum of $250, such Appeal Bond, however, not to act as a

Supersedeas. Such Appeal Bond to be approved by the Court or the Clerk of the Court.

Done at Corpus Christi, Texas, this May 31, 1935.

T. M. KENNERLY,
United States District Judge.

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119 APPEAL BOND.

Filed June 6, 1935.

(Title Omitted.)

Know All Men by These Presents: That we, Cameron County Water Improvement District No. One, as Principal, and the undersigned as Sureties, of the County of Cameron and the State of Texas are held firmly bound unto C. L. Ashton, J. W. Terry, Rebecca Terry White, C. W. Griffin, A. G. Griffin, L. E. Wood and West Coast Life Insurance Company in the sum of $250.00 lawful money of the United States to be paid to them and their respective executors, administrators and successors, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally and each of our heirs, executors and administrators and by these presents.

Sealed with our seals and dated this 1st day of June, A. D. 1935.

Whereas, the above named Cameron County Water Improvement District Number One has prosecuted a Writ of Error and an appeal to the Circuit Court of Appeals for the Fifth Circuit to reverse the judgment of the District Court for the Southern District of Texas, in the above entitled cause;

Now, Therefore, the conditions of this obligation are such that if the above named Cameron County Improvement District Number One shall prosecute its said appeal to effect and answer all costs if it fails to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

CAMERON COUNTY WATER
120 IMPROVEMENT DISTRICT
NUMBER ONE,
By H. L. STARNES, Mgr.,
Principal.
THE METROPOLITAN CASUALTY INSURANCE CO. OF NEW YORK, N. Y.,
By R. B. HAMILTON,
(Seal) Attorney-in-fact, Sureties.

Approved June 5, 1935.
T. M. KENNERLY, Judge.

---

121 In the District Court of the United States for the Southern District of Texas, Brownsville Division.

In the Matter of:
Cameron County Water Improvement District No. One.

Bkcy. No. 520.

On this the 6th day of May, 1935, at a regular meeting of the Board of Directors of Cameron County Water Improvement District Number One, Harlingen, Texas, on motion made and duly seconded and unanimously carried, the manager of this District, H. L. Starnes, was authorized to sign the name of Cameron County Water Improvement District No. One to an Appeal Bond appealing the case No. 520, Cameron

County Water Improvement District No. One in Bankruptcy, pending in the District Court of the United States for the Southern District of Texas, Brownsville Division, and his acts to be in all things the acts of this District and binding on this District and it is further ordered that the Secretary of this Board attach the seal to said bond as an official act of said District and that a certified copy of this order be duly attached to this bond.

F. H. GREEN,
President.

(Seal)

Attest:

J. W. WADE,
Secretary.

I, J. W. Wade, acting Secretary of the Board of Directors of Cameron County Water Improvement District No. One, do hereby certify that the above and foregoing resolution was duly passed by the directors of Cameron County Water Improvement District Number One on the 6th day of May, 1935, and the same appears of record in Vol. ...., Page .... of the Minutes of said District.

J. W. WADE,
Acting Secretary.

123 CLERK'S CERTIFICATE.

In the District Court of the United States for the Southern District of Texas, Houston Division.

I, L. C. MASTERSON, Clerk of the District Court of the United States for the Southern District of Texas, in the Fifth Circuit and District aforesaid, do hereby certify the foregoing to be a true and correct copy of the Record, Assignment of Errors, and all proceedings had in the Case, in Cause No. 520 on the Bankruptcy Docket of said Court, at the Brownsville Division, entitled: In the Matter of Cameron County Water Improvement District Number One, In Bankruptcy, as called for in the Praecipes for Transcript on pages 1, 2 and 3 of this transcript, as the same now appears on file and of record in my office.

To certify which, witness my hand and the seal of said Court, at Houston, in said District, this the 21st day of June, A. D. 1935.

L. C. MASTERSON,
(Seal) Clerk, United States District Court, Southern District of Texas,
By M. ANDERSON, Deputy.

Waiver of Citation omitted from the printed record, the original thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * * * * *

[fol. 140] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of November 4, 1935

No. 7830

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NUMBER ONE

versus

C. L. ASHTON et al.

On this day this cause was called, and, after argument by W. B. Lewis, Esq., for appellant, and Palmer Hutcheson, Esq., for appellees, was sumbitted to the Court.

[fol. 141] JOINT PETITION TO CERTIFY QUESTIONS TO THE UNITED STATES SUPREME COURT—Filed January 21, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 7830

In re CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. ONE

In Bankruptcy

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. ONE, Appellant,

vs.

C. L. ASHTON, WEST COAST LIFE INSURANCE COMPANY, C. W. GRIFFIN, A. G. Griffin, Leonard E. Wood, and J. W. Terry, Individually and as Trustee, Appellees

To the Honorable Circuit Court of Appeals:

Now come the appellant and the appellees in the above cause and respectfully petition the Court to certify to the

Supreme Court of the United States the questions involved in this case, as authorized by Section 346 of Title 28, United States Code Annotated, and as grounds therefor say:

[fol. 142]

I

This case was instituted in the District Court of the United States for the Southern District of Texas under Sections 301, 302, and 303, Title 11, United States Code Annotated. These sections of the Code embody Sections 78, 79 and 80, as added May 24, 1934 to the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States". The amendment of May 24, 1934 was Public Act No. 251 of the 73rd Congress and is commonly known as the Sumners-Wilcox Act or the Municipal Bankruptcy Act. This amendment was entitled "Provisions for the emergency temporary aid of insolvent public debtors, and to preserve the assets thereof, and for other related purposes". By its terms it expires within two years from the date that the Act took effect, and, therefore, will expire on May 24, 1936. It will be impracticable to obtain a decision by the Supreme Court of the United States before the expiration date of the Act unless this case is certified. Being a bankruptcy case, this case is under the rules of the Court entitled to be advanced for disposition and was so advanced by the Court and submitted before it on the 4th day of November, 1935.

The trial court determined that the Municipal Bankrupty Act was unconstitutional, and the constitutionality of that Act is before the Court for determination with respect to a water improvement district of the type of appellant as distinguished from a city.

II

In determining the constitutionality and applicability of [fol. 143] the Municipal Bankruptcy Act to the appellant, there is before this Court for consideration Article 1024A of Vernon's Annotated Texas Statutes (1935 Supplement) embodying Chapter 107 of the Act of the 44th Legislature, of the state of Texas, passed April 27, 1935, and entitled "An Act authorizing municipalities, political subdivisions, and taxing districts to proceed under the provisions of Federal Bankruptcy Laws enacted for the relief of such municipalities, political subdivisions, and taxing districts".

The constitutionality of this Act of the Texas Legislature is involved in the determination of this case, both with relation to the provisions of the Federal Constitution and the State Constitution prohibiting the impairment of the obligation of contracts by State legislation.

III

In connection with the plan of readjustment tendered by the District in the bankruptcy proceeding, in the event that the above acts are held constitutional, it becomes necessary to determine whether as provided by the Act "the taxing district is authorized by law, upon confirmation of the plan, to take all action necessary to carry out the plan". Such a determination involves consideration of the proposed financing of the plan of readjustment by the Reconstruction Finance Corporation under Section 403, of Title 43, United States Code Annotated, which embodies Section 36, Part 4, of Title II of the Agricultural Adjustment Act of May 12, 1933, entitled: "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, [fol. 144] to provide for the orderly liquidation of joint stock land banks, and for other purposes". Title II of that Act relates to "Agricultural Credits" and provides that it may be cited as the "Emergency Farm Mortgage Act of 1933", and Part 4 of that Title is headed "Refinancing of Agricultural Improvement District indebtedness for the benefit of farmers—Loans by Reconstruction Finance Corporation" (Volume 48, Part 1, Public Works, United States Statutes at Large, page 49). The section of the Act referred to provides for loans to be made by the Reconstruction Finance Corporation to "Irrigation Districts—duly organized under the laws of any state, and to political subdivisions of states, which prior to the date of the enactment of this Act, have completed projects devoted chiefly to the improvement of lands for agricultural purposes".

The constitutionality of the above Act, as well as the constitutionality of Articles 1644C and 7807E, Vernon's Annotated Texas Statutes, Supplement of 1935, is necessarily involved in determining whether the plan of readjustment as tendered may be consummated.

There are, of course, other questions involved in the case, such as a determination of the question of whether the plan of readjustment tendered is "fair, equitable or to the best interests of the creditors, and does not discriminate unfairly in favor of any class of creditors," and the question whether the District could consummate the plan tendered without submitting the plan at an election to the taxpayers of the District. However, such questions need not be deter-[fol. 145] mined if the case is disposed of by reason of any of the questions hereinabove mentioned, none of which have been definitely determined by any other Circuit Court of Appeals, or by the Supreme Court of the United States. The Supreme Court of the United States since the submission of this case has rendered important decisions which deal with the relation of state rights to national control under federal legislation, such as the Home Owners Loan Act and the Agricultural Adjustment Act (Hopkins Federal Savings & Loan Association et al. vs. Clearly et al., decided December 9, 1935, and United States of America vs. Wm. M. Butler, Receiver of Hoosac Mills Corporation, decided January 6, 1936), which make it important that this court decide these questions as soon as possible.

It is desired by all parties interested herein, and therefore respectfully moved by them, that the questions hereinbefore set out be certified to the Supreme Court of the United States, in order that they may be determined by that Court prior to the expiration of the Municipal Bankruptcy Act, May 24, 1936.

Respectfully submitted this 17th day of January, 1936.

(Signed) Vincent M. Miles, W. B. Lewis, Attorney for Appellants. J. W. Terry, Joyce Cox, W. P. Hamblen, Palmer Hutcheson, by (Signed) Palmer Hutcheson, Attorneys for Appellees.

[fol. 146] Opinion of the Court—Filed March 3, 1936

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 7830

Cameron County Water Improvement District Number One, Appellant,

versus

C. L. Ashton et al., Appellees

Appeal from the District Court of the United States for the Southern District of Texas

(March 3, 1936)

Before Foster and Sibley, Circuit Judges, and Dawkins, District Judge

Foster, Circuit Judge:

This is an appeal from a judgment dismissing on the ground of want of jurisdiction a proceeding brought by Cameron County Water Improvement District No. 1, an irrigation district of Texas, to have approved and made effective a plan of readjustment of its bonded indebtedness, under the provisions of the Act of May 24, 1934, chapter 345.

The act is amendatory and supplemental to the National Bankruptcy Act of 1898, adding chapter Nine, Sections 78, [fol. 147] 79 and 80, to the Act. It is somewhat lengthy and in considerable detail as to the plan of readjustment to be proposed and the action of the court thereon, but its salient provisions may be somewhat briefly stated, as follows.

Section 79 limits the life of the act to two years after passage and vests jurisdiction in courts of bankruptcy over proceedings for the relief of political corporations, as provided in the act, in addition to their original jurisdiction in bankruptcy. Section 80 provides that any municipality or other political subdivision of any state, including irrigation districts among others named, may file a petition stating that the taxing district is insolvent or unable to meet its

debts as they mature and that it desires to effect a plan of readjustment of its debts. Jurisdiction is given to the court in whose territorial jurisdiction the taxing district or a major part thereof is located. The section further provides, that the petition shall state that a plan of readjustment has been prepared, is filed and submitted with the petition and that creditors to be affected, not less than 30 per cent in the case of an irrigation district, have accepted it in writing, the written acceptances, with a list of all known creditors of the taxing district with their addresses, so far as known, and a description of their respective claims to be filed with the petition. Upon the filing of such petition the judge shall enter an order approving it as properly filed under the chapter, if satisfied that such petition complies with the chapter and has been filed in good faith, but dismissing it if not so satisfied. In the case of an irrigation district the plan of readjustment shall not be confirmed until it has been accepted in writing by 66 2/3 per cent of the creditors affected. If the filing of the petition is approved the judge may require the taxing district to give such notice as the order may direct to the creditors and cause publica-
[fol. 148] tion to be made at least once a week for three successive weeks of a hearing to be had within 90 days after the approval of the petition, for the purpose of considering the plan of readjustment and any changes or modification thereof that may be proposed. If creditors holding 5 per cent in amount of the debts sought to be readjusted shall, within 90 days after the first publication of the notice, appear and controvert the facts alleged in the petition the judge shall decide the issues presented and unless the material allegations of the petition are sustained, shall dismiss the petition. The act contains this important provision:

"Section 80. (k) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any political subdivision thereof in the exercise of its political or governmental powers, including expenditures therefor, and including the power to require the approval by any governmental agency of the State of the filing of any petition hereunder and of any plan of readjustment, and whenever there shall exist or shall hereafter be created under the law of any State any agency of such State authorized to exercise supervision or control over the fiscal affairs of

all or any political subdivision thereof, and whenever such agency has assumed such supervision or control over any political subdivision, then no petition of such political subdivision may be received hereunder unless accompanied by the written approval of such agency, and no plan of readjustment shall be put into temporary effect or finally confirmed without the written approval of such agency of such plans."

The suit was filed on July 17, 1934, after the passage of the act, but the original petition is not in the record. An amended petition was filed August 22, 1934. It sub- [fol. 149] stantially alleges that petitioner is an irrigation district having approximately 240,000 acres of land within its boundaries, wholly located in Cameron County, Texas, and has been in operation for something like 20 years, aiding and encouraging agriculture and supplying water to farmers to irrigate their lands and produce their fruit and vegetables; that about two and a half years prior thereto the country entered into a general financial depression, causing great reduction in the price which the farmers received for their fruit and vegetables, the prices being so low they did not pay the cost of production, thereby making it impossible for the farmers of said district to pay their flat rates and bond tax; that petitioner is insolvent and unable to meet its debts as they mature and desires to effect a plan of readjustment of its debts as provided by section 80; that petitioner has outstanding approximately $800,000.00 of bonds, bearing 6 per cent interest and maturing serially, which are annual obligations against the district; that petitioner realizing its inability to meet its debts began to work out some kind of a plan to adjust them that would be fair and equitable to both the district and the bondholders and applied to the Reconstruction Finance Corporation for a loan to liquidate said indebtedness; that on January 13, 1934, the Reconstruction Finance Corporation authorized a loan to the district of $400,000.00, for the purpose of refunding these bonds at 49.8 cents on the dollar, which would enable petitioner to reduce its bond taxes at least ⅔ and would make the district financially sound; that the plan had been accepted in writing by the holders of more than 30 per cent of the bonds; that petitioner will be able to secure the approval

of more than 66⅔ per cent of all the bonds at a hearing, as provided for in § 80(d). The petition contained a copy of an order of the Reconstruction Finance Corporation authorizing the appropriation of the funds to be loaned and the conditions to be complied with as to the deposit [fol. 150] and surrender of the bonds, a copy of the resolutions of the board of directors of petitioner accepting the loan for the purpose intended, a list of persons holding more than 30 per cent of the outstanding bonds who had accepted the plan, with their addresses, and a copy of a letter to the bondholders submitting the plan.

On August 22, 1934, the court entered an order approving the petition as filed in compliance with the provisions of the act in good faith and directing petitioner to give notice as required by law to the bondholders, to publish a notice in the "Bond Buyer" of New York, for three successive weeks and directing that a hearing be had on the petition at Houston, Texas, the first day of December, 1934.

On October 1, 1934, a number of bondholders, appellants herein, holding more than 5 per cent of the total issue of bonds, filed a contest to the petition and a motion to dismiss and prayed for leave to intervene, which was granted. So far as is necessary to state, the opposition to the petition alleged that the court was without jurisdiction because the proceeding was not in bankruptcy and Congress was without authority to adopt the act; that the proceeding would operate to deprive the contestants of their property without due process of law in violation of the 5th amendment; that the petition was ineffective because the Legislature of Texas had passed no act prior to its filing which would authorize petitioner to accept the benefit of the Act of Congress. The petition of opposition also denied that petitioner was insolvent, on the ground that taxes levied to retire the bonds would be amply sufficient for that purpose were they collected, admitted that economic conditions have rendered the payment of taxes and debts by the farmers of the district difficult, but denied that such payment in the future will be impossible.

The record does not disclose the date upon which a hearing was had or the scope of such hearing but from [fol. 151] an opinion by the court, filed Deceber 1, 1934 it would appear that a hearing was had only on the pleadings. The District Judge rendered a comprehensive

opinion stating his views, learnedly discussed the history of bankruptcy and held that as petitioner was an agency of the state, through which the state exercised its governmental functions of levying and collecting taxes to pay the bonds, the bonds were therefore obligations of the state of Texas and Congress was without power to enact the statute and confer upon the Federal Courts of bankruptcy jurisdiction to readjust an obligation of the district as provided in the act. He also found that as the petition did not state what, if any, effort had been made to collect the taxes or enforce the payment thereof and the lien securing them, except the allegation that during a period of time the farmers had been unable to sell their products for an amount sufficient to pay their taxes, there could be no proof other than as to this, which would not be sufficient to show insolvency. He concluded that the petition did not present a case authorizing the court to strike down more than 50 per cent of the face value of the bonds held by contestants and require them to received in full settlement thereof approximately 49.8 per cent of their face value. He did not pass upon the objection of intervenors that the State of Texas had not consented to the proceeding. After the rendition of the opinion but before the judgment was entered appellant sought to amend the petition. It also applied for a new trial in vain.

We need not attempt to review the history and development of the Bankruptcy Law. The Act of May 24, 1934, is substantially similar in letter and intent to the Act of March 3, 1933, which added Chapter Eight, containing section 77, to the National Bankruptcy Act. The 1934 Act extends the benefit of the law to political corporations, making available relief similar to that granted to other corporations by the Act of 1933. In Continental Illinois Nat. [fol. 152] Bk. & Tr. Co. vs. Chicago, R. I. & Pac. Ry. Co., 294 U. S. 648, the Supreme Court construed section 77 and held it to be valid.

Of course, a sovereign state may not be sued by an individual without her consent. But Congress may extend the jurisdiction of the inferior courts of the United States over the states of the Union where the State is seeking relief and a Federal question is presented for decision. Ames vs. Kansas, 111 U. S. 449. Th immunity of a state does not extend to a political corporation of the state and a suit to

enforce the obligations of such corporations may be maintained in a Federal Court without the consent of the state. Cowles vs. Mercer County, 7 Wall. 118; Lincoln County vs. Luning, 133 U. S. 529; Loeb vs. Columbia Township, 179 U. S. 472.

It is apparent that the Act of May 24, 1934, was not intended to interfere with the sovereign rights of any state. Full control over the liquidation of the indebtedness of any political subdivision is reserved to the state under the provisions of Sec. 80(k) above quoted. If the state chooses to exercise her sovereign authority she has the right to do so and the act is without effect. We have no hesitancy in holding that the Act of May 24, 1934, is a law on the subject of bankruptcies within the power of Congress to enact and valid.

We do not consider that consent of the state in advance is necessary to enable a political corporation to take advantage of the beneficial provisions of the law. Manifestly, that interpretation would rob the statute of practical efficiency in many states as there would not be time for the legislature to act before the law would expire by limitation. There is no existing state agency in Texas authorized to exercise supervision or control over the fiscal affairs of political subdivisions of the state. Since this case was de- [fol. 153] cided by the District Court the legislature of Texas has adopted an act authorizing all political subdivisions of the state to proceed under all bankruptcy laws enacted by Congress which laws have for their object the relief of municipal indebtedness, including the Act of May 24, 1934. Article 1024 a Vernon's Annotated Rev. Civ. Stat. of Texas, 1935 Supplement. We conclude that the District Court has jurisdiction over this proceeding.

The act is remedial and to be liberally construed. The petition tracks the statute. In considering the sufficiency of the petition the General Orders in Bankruptcy and the Federal Rules in Equity must be looked to rather than the rules of pleading and practice in the state courts of Texas. One filing a voluntary petition in bankruptcy is not required to do more than state the jurisdictional facts, that he owes debts that he is unable to pay in full, that he is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and that he desires to obtain the benefit of the acts of Congress relat-

ing to bankruptcy. Bankruptcy Form No. 1. His financial condition is shown in detail by the schedules annexed. Under the provisions of Equity Rule 25, in addition to the jurisdictional averments, a bill of complaint is required to contain only a short and simple statement of the ultimate facts upon which plaintiff asks relief, omitting any mere statement of evidence. The Act of May 24, 1934, provides that the judge, after hearing, may direct the taxing district to file such schedules and submit such other information as may be necessary to disclose the conduct of the affairs of the taxing district and the fairness of any proposed plan. The act clearly contemplates that the District Judge, in the exercise of sound discretion, should not only allow but may direct necessary amendments to the petition in order to permit the granting of the relief provided by the act. Technical rulings on pleadings have no application in ad-[fol. 154] ministering the act. Unquestionably the petition contains the necessary allegations to show jurisdiction in the District Court for the Southern District of Texas and the allegations of insolvency and inability of the district to pay its debts as they mature were sufficient to warrant the introduction of evidence to prove these allegations. If the court considered it necessary that the petition be amplified it was his duty to permit or order an amendment.

Other objections urged by intervenors are without merit and do not require discussion.

It follows that the judgment dismissing the petition was erroneous. The judgment appealed from is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

[fol. 155] JUDGMENT

Extract from the Minutes of March 3, 1936

No. 7830

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NUMBER ONE

versus

C. L. ASHTON et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court;

It is further ordered, adjudged and decreed that the appellees, C. L. Ashton, and others, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 156] ORDER STAYING MANDATE—Filed March 7th, 1936

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 7830

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NUMBER ONE, Appellant,

versus

C. L. ASHTON et al., Appellees

On consideration of the application of the Appellees in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme

Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, record and brief have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Cout has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 7th day of March, 1936.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 157] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 140 to 156 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 7830, wherein Cameron County Water Improvement District Number One is appellant, and C. L. Ashton, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 139 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 9th day of March, A. D. 1936.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 158] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 13, 1936

The petition herein for a writ of certiorari to the United States Circuit of Appeals for the Fifth Circuit is granted, and the case is assigned for argument on Tuesday, April 28, next, after the cases heretofore assigned for that day.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

MAR 27 1936

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 859

C. L. ASHTON ET AL.,

Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. ONE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

PALMER HUTCHESON,
Houston, Texas,
J. W. TERRY,
Galveston, Texas;
W. P. HAMBLEN,
Houston, Texas,
Attorneys for Petitioners.

BAKER, BOTTS, ANDREWS & WHARTON,
Houston, Texas;
TERRY, CAVIN & MILLS,
Galveston, Texas,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 859

C. L. ASHTON ET AL.,

Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. ONE.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

Petitioners are C. L. Ashton of Harris County, Texas; West Coast Life Insurance Company, C. W. Griffin, A. G. Griffin and Leonard E. Wood, all of San Francisco, California, and J. W. Terry of Galveston, Texas, individually and as trustee for Rebecca Terry White. Petitioners were appellees in the Circuit Court of Appeals and were successful contestants in the United States District Court of a proceeding instituted by Cameron County Water Improvement District No. One (of Texas) to have a plan of readjustment of its bonded indebtedness made effective under Chapter Nine, which was added to the National Bankruptcy Act by the Act of May 24, 1934 (commonly known as the Sumners-Wilcox Act or the Municipal Bankruptcy Act).

Petitioners applying for writ of certiorari herein respectfully show this Honorable Court:

I.

Summary Statement of the Matter Involved.

The primary question to be determined in this case is whether the so-called Municipal Bankruptcy Act is constitutional. The United States District Court for the Southern District of Texas held the Act unconstitutional as applied to this type of District (9th Fed. Supp. 103), but the United States Circuit Court of Appeals for the Fifth Circuit held the Act constitutional on appeal from said judgment. No other Circuit Court of Appeals has passed on this Act, and the question has not heretofore been presented to this Honorable Court.

Respondent instituted this suit seeking approval of a plan of readjustment which was to be financed by Reconstruction Finance Corporation. The proceeding was instituted under the provisions of Chapter Nine added to the National Bankruptcy Act of 1898 by the Act of May 24, 1934 (Chapter 345, 48 Statutes, page 798; Sections 301, 302, and 303, Title 11, United States Code). This Act was entitled "Provisions for the Emergency Temporary Aid of Insolvent Public Debtors and to Preserve the Assets Thereof, and for Other Related Purposes." The respondent sought by this proceeding to compel the holders of its bonds (including these petitioners) to accept 49.8% of the par value of their bonds in full satisfaction, thus relieving the District of its duty to levy and collect taxes to discharge the full amount owing on its bonds, and thus relieving the taxpayers of the District to this extent of their obligations as taxpayers.

The District is a political or governmental subdivision of the sovereign State of Texas. Its organization and func-

tions are provided for by the Constitution of the State of Texas, as well as by the State statutes. Section 52, Article III, of the Constitution of the State of Texas, adopted as an amendment in 1904, provides for "internal improvements", and specifies that such a political subdivision "may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such District or territory * * * and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof as the Legislature may authorize."

Section 59a of Article XVI of the Constitution of the State of Texas, adopted as an amendment in 1917, provides for the "conservation of natural resources" and specifies that irrigation and other similar measures looking to "the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto".

Legislation was passed in pursuance of these constitutional provisions—Articles 7622-7807, Revised Civil Statutes of Texas, 1925, "Water Improvement Districts"; Articles 5012-5107, Revised Civil Statutes of Texas, 1911, "Irrigation Districts". (Amended—1913 Ch. 172, 33d Leg.; 1917 Ch. 87, 35th Leg.)

This District was originally organized in 1914 as Cameron County Irrigation District No. One, and certain bonds involved in the plan of readjustment were then issued by the District in that name. Later, in 1919, the District was converted into Cameron County Water Improvement District No. One, and other bonds involved in the plan of readjustment were then issued in that name. Bonds of the District aggregating approximately $800,000 are outstanding. (Paragraph IV, of plaintiff's first amended petition, R. 5.)

Your petitioners, holding $78,500 of the bonds, more than 5%, in amount of par value of the bonds of the District outstanding at the time the proceeding was instituted by the District, as authorized by the Act, filed a contest and motion to dismiss (R. 103) and also, as authorized by the Act, obtained leave to intervene (R. 53), and adopted as the basis of their intervention the matters set forth in the contest and motion to dismiss. The court sustained the motion to dismiss on the ground that the Act, as applied to this type of District, was unconstitutional (R. 113).

Your petitioners in their contest and motion to dismiss advanced among others the following grounds (R. 104, 105 and 106):

(a) That the Act was not within the scope of subdivision (4) of Section VIII of Article I of the Constitution of the United States, providing that Congress might pass "uniform laws upon the subject of bankruptcies throughout the United States".

(b) That the Act violated the Fifth Amendment to the Constitution of the United States, and deprived the contestants of their property without due process of law.

(c) That the Act violated the Tenth Amendment to the Constitution of the United States, providing that powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, because the Act attempted to extend the bankruptcy powers of the National Government to political subdivisions of a State, except in instances where the State passed legislation prohibiting same, or where the political subdivision failed to obtain the consent of a State fiscal agency, if one existed in the State having control of such political subdivision.

(d) That the Act violated Section X of Article I of the Constitution of the United States, prohibiting any State from passing any law impairing the obligation of contracts (*either with or without the consent of Congress*) by attempting to permit the States to authorize their political subdivisions to take advantage of the bankruptcy act and thereby to discharge the obligation of contracts entered into pursuant to the Constitution and laws of the States.

(e) That the Act of the Legislature of the State of Texas (Chapter 107, 44th Legislature, Regular Session, 1935; Article 1024a, Vernon's Annotated Texas Civil Statutes, 1935) seeking to specifically authorize its political subdivisions to take advantage of the Municipal Bankruptcy Act violated Section X of Article I of the Constitution of the United States as aforesaid, and also violated Section XVI of Article I of the Constitution of the State of Texas.

(f) That the plan of readjustment tendered by the District for approval showed on its face that it was not one under which, even if confirmed, the District court "take all action necessary to carry out the plan", because it contemplated the loaning of funds by the Reconstruction Finance Corporation (a governmental agency disbursing Federal funds), for use in aid of a purely intrastate project and a matter of purely State or local concern and not national in its scope; such a loan not being within the powers delegated to Congress by the "general welfare" clause of the Constitution, though purported to be authorized by certain provisions of the Agricultural Adjustment Act, to-wit: Section 36 (Title II, Part Four) thereof, captioned as follows: "Refinancing of Agricultural Improvement District Indebtedness for the Benefit of Farm-

ers. Loans by Reconstruction Finance Corporation.'' Section 403, Title 43, United States Code.)

An appeal was taken from the judgment of the United States District Court, which held the Municipal Bankruptcy Act was unconstitutional and dismissed the plaintiff's petition for want of jurisdiction; and the case was submitted in the United States Circuit Court of Appeals for the Fifth Circuit on November 4, 1935. On January 21, 1936, no decision having been rendered by the Circuit Court of Appeals at that time, all parties to the appeal caused to be filed a joint petition requesting the Circuit Court of Appeals to certify the constitutional questions involved to this Honorable Court (R. 140). However, the petition was not granted and on March 3, 1936 the court filed its opinion and rendered its judgment herein reversing the judgment of the United States District Court and holding the Municipal Bankruptcy Act constitutional (R. 144-151).

II.

Reasons Relied Upon for the Allowance of the Writ.

(a) The Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be settled by this Court—whether the Municipal Bankruptcy Act is constitutional. Numerous cases involving this question are now pending and the question should be determined by the highest court of the land as soon as possible.

(b) The Circuit Court of Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court, because the Circuit Court has decided that the Municipal Bankruptcy Act does not infringe States' rights as reserved under the Tenth Amendment. Among the decisions of this Honorable Court which are re-

lied upon by your petitioners as conflicting with the decision of the Circuit Court of Appeals in this respect are:

Hopkins Federal Savings & Loan Assn. et al. v. *Cleary*, 296 U. S. 315 (1935);

United States v. *Constantine*, 296 U. S. 287 (1935);

United States of America v. *Butler, Receiver of Hoosac Mills Corp.*, 56 Sup. Ct. Rep. 312, — U. S. — (1936).

These cases, of course, do not deal with bankruptcy legislation, but do deal with "State rights" and the principles established thereby are, it is believed, determinative of this case.

(c) The Circuit Court of Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court because the Circuit Court has held the Municipal Bankruptcy Act to be valid under subdivision (4), Section VIII, Article I, of the Constitution of the United States, authorizing Congress to pass "uniform laws on the subject of bankruptcies throughout the United States." Petitioners contend that the Act does not meet the requirements of that clause of the Constitution, is not uniform in is application, and violates the Fifth Amendment to the Constitution. Among the decisions of this Honorable Court which are relied upon by your petitioners as conflicting with the decision of the Circuit Court of Appeals in this respect are:

Louisville Joint Stock Land Bank v. *Radford*, 295 U. S. 555 (1935);

International Shoe Company v. *Pinkus*, 278 U. S. 261 (1929);

Florida v. *Mellon*, 273 U. S. 12 (1927);

(d) The Circuit Court of Appeals has decided an important question of general law in a way probably untenable and in conflict with the weight of authority, because the

Circuit Court disregarded the rule that the Federal Government cannot interfere directly or indirectly with state agencies either by taxation or otherwise, and that a District of the type here involved is a governmental body of the State and that the taxing power is a governmental function. In addition to the cases cited under the preceding grounds, the decision of the Circuit Court of Appeals in this case is contrary in principle to the decisions of this Honorable Court and the Supreme Court of Texas, in the following cases:

Supreme Court of the United States.

Buffington v. *Day*, 11 Wall. 113 (1870);
Fallbrook Irrigation District v. *Bradley*, 164 U. S. 112 (1896);
Houck v. *Little River Drainage District*, 239 U. S. 254 (1915);
Lane County v. *Oregon*, 7 Wallace 71 (1868);
Meriwether v. *Garrett*, 102 U. S. 472 (1880);
O'Neill v. *Leamer*, 239 U. S. 244 (1915);
Pollock v. *Farmers Loan & Trust Company*, 157 U. S. 429; (158 U. S. 601, on rehearing.) (1895);
United States v. *B. & O. R. R. Co.*, 17 Wall. 322 (1872).

Supreme Court of Texas.

Parker v. *El Paso Water Improvement District No. 1*, 116 Texas 631 (1927);
Jones v. *Williams, Tax Collector*, 121 Texas 94 (1931);
Robbins v. *Limestone County*, 114 Texas 345 (1925);
Texas & Pacific Railway Company v. *Ward County Irrigation District No. 1*, 112 Texas 593 (1923);
Tom Green County v. *Moody, Attorney General*, 116 Texas 299 (1926).

(e) The Circuit Court of Appeals has decided a question of constitutional law in a way that conflicts with decisions of this Honorable Court and of the Supreme Court of Texas, and of other courts, relating to the Federal and State constitutional provisions prohibiting the passage by the State of laws impairing the obligation of contracts, because the Circuit Court held that a statute passed by the State gave the bankruptcy court "jurisdiction over this proceeding" which would not exist over the State's opposition. Among the cases conflicting with the Circuit Court's decision in this respect are the following:

Gunn v. *Barry*, 82 U. S. 610 (1872);
Ogden v. *Saunders*, 12 Wheat. 213 (1827);
Worthen Company v. *Thomas*, 292 U. S. 426 (1934);
Worthen Company v. *Kavanaugh*, 295 U. S. 56 (1935);
In re Dillard, 7 Fed. Cases, 3912 (1873);
Travelers Insurance Company v. *Marshall*, 124 Texas 45 (1934);
Cattle Raisers Loan Co. v. *Doan*, 86 S. W. (2d) 252, and 1082 (Texas 1935);
Pryor et al., Commissioners Sabougla Drainage District v. *Goza*, 159 So. (Miss.) 99 (1935).

(f) The Circuit Court of Appeals has decided an important question of local law, dealing with the powers and duties of political or governmental subdivisions of the State of Texas with relation to taxation and contract obligations in a way probably in conflict with applicable local decisions.

The decision of the Circuit Court of Appeals is contrary in principle to the following decisions which recognize that the duty of political subdivisions of Texas to collect taxes to pay their bonds and other obligations may be enforced by mandamus:

Voorhies v. *City of Houston*, 70 Texas 331 (1888);
Hidalgo County v. *Morey*, 74 F. (2d) 101 (1934).

(g) The Circuit Court of Appeals has decided a question involving Federal law and local law in a way that conflicts with both, and with decisions of the courts relating thereto, in that the Circuit Court failed to hold that the District's amended petition showed on its face that the plan of readjustment was one that could not lawfully be consummated because it was dependent upon the making of a loan of Federal funds by Reconstruction Finance Corporation to the District with conditions that impaired state sovereignty and exceeded Federal powers. Among the cases conflicting in principle with the decision of the Circuit Court are the following:

Arkansas-Missouri Power Co. v. *City of Kennett*, 78 F. (2d) 911 (1935);

Missouri Public Service Co. v. *City of Concordia*, 8 Fed. Supp. 1 (1934);

Bowers v. *City of Taylor*, 16 S. W. (2d) 520; 24 S. W. (2d) 816 (1929-1930). (Opinion of Texas Commission of Appeals adopted by Supreme Court of Texas.)

Wherefore your petitioners respectfully pray that a writ of certiorari issue under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of proceedings in the case numbered and entitled on its docket No. 7830, Cameron County Water Improvement District No. 1, Appellant, vs. C. L. Ashton et als., Appellees, and that the said judgment of the Circuit Court of Appeals be reversed by this Honorable Court and the decree of the District Court be affirmed and

that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

C. L. ASHTON,
West Coast Life Insurance Company;
C. W. GRIFFIN,
A. G. GRIFFIN,
LEONARD E. WOOD,
J. W. TERRY,
Individually and as Trustee for Rebecca Terry White;
By PALMER HUTCHESON,
J. W. TERRY,
W. P. HAMBLEN,
Counsel for Petitioners.

March, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 859

C. L. ASHTON ET AL.,

Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. ONE.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The opinion of the United States District Court for the Southern District of Texas is reported in 9 Fed. Supp. 103. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit has not yet been printed in the official reports, but the opinion of that court appears at page 144 *et seq.* of the printed record in this case. The opinion of the Fifth Circuit Court of Appeals was rendered on March 3, 1936, and was written by Circuit Judge Foster, who sat in the case with Circuit Judge Sibley, and District Judge Dawkins.

II.

Jurisdiction.

1. Jurisdiction of this cause is conferred upon this Honorable Court by Judicial Code, Section 240, as amended, which appears as United States Code, Title 28, Section 347; and also by Chap. 345, 48 Stat. page 798, Act of May 24, 1934.

2. The date of the decree of the Circuit Court of Appeals in this case was March 3, 1936 (R. 151). No petition for rehearing was filed, on account of the limited time intervening before the Act expires by its terms, on May 24, 1936.

3. The Circuit Court of Appeals reversed the judgment of the United States District Court. The District Court had dismissed the proceeding instituted by the plaintiff for want of jurisdiction, thereby making a final disposition of the case subject to the appeal (R. 125).

4. The power of this Honorable Court to review this type of case on petition for certiorari is sustained by the following, among other, cases:

Louisville Joint Stock Land Bank v. *Radford,* 295 U. S. 555;

Continental Illinois National Bank & Trust Company v. *Chicago, Rock Island & Pacific Railway Company,* 294 U. S. 648;

Callaghan v. *Reconstruction Finance Corporation* (United States Supreme Court, March 2, 1936.)

III.

Statement of the Case.

A full statement of the case has been given under heading I of the petition, and in the interest of brevity the statement is not repeated at this point.

IV.

Specification of Errors.

Petitioners will rely upon the following specification of errors:

1. The Circuit Court of Appeals erred in reversing the judgment of the United States District Court, which dismissed the proceeding instituted by the District under the Act of May 24, 1934, for want of jurisdiction, and which held that Act to be unconstitutional, as applied to such a District.

2. The Circuit Court of Appeals erred in holding that the Act of May 24, 1934, was constitutional.

3. The Circuit Court of Appeals erred in holding that the Act of May 24, 1934, was within the scope of subdivision (4) of Section VIII of Article I of the Constitution of the United States providing that Congress shall have the power to establish uniform laws upon the subject of bankruptcies throughout the United States.

4. The Circuit Court of Appeals erred in not holding that the Act of May 24, 1934, failed to meet the constitutional requirement of uniformity, since its operation was dependent for its application on the will of the State of which the political subdivision is a part.

5. The Circuit Court of Appeals erred in not holding that the Act of May 24, 1934, was unconstitutional because it attempted to deal with political subdivisions, control over which was reserved to the states by the Tenth Amendment, and could only be delegated to the United States by constitutional amendment duly adopted instead of by mere consent or acquiescence of any one State.

6. The Circuit Court of Appeals erred in not holding that the Act of May 24, 1934, was unconstitutional because

the Act attempted to authorize any State to impair the obligation of the contracts of its political subdivisions in violation of subdivision (1) of Section X of Article I of the Constitution, by permitting the application of the Bankruptcy Act to its political subdivisions.

7. The Circuit Court of Appeals erred in not holding that since "if the State chooses to exercise her sovereign authority, she has the right to do so and the Act is without effect," the Act of the Legislature of Texas, combined with the Act of Congress to bring about an impairment of the obligation of contracts of the State's political subdivisions, in violation of subdivision (1) of Section X of Article I of the Constitution, and in violation of Section XVI of Article I of the Constitution of Texas.

8. The Circuit Court of Appeals erred in not holding that the Act of May 24, 1934, was unconstitutional because it attempted to make its application dependent upon the will of a State in which a political subdivision invoking the Act is located, thus destroying the uniformity of the Act as a National Bankruptcy Act, and in attempting to extend its application into the domain of the powers reserved to a State, by mere acquiescence of a State, rather than by amendment of the Federal Constitution in the manner provided by Article V thereof.

9. The Circuit Court of Appeals erred in not holding that the plan of readjustment tendered showed on its face that it was not one under which even if confirmed, the District could "take all action necessary to carry out the plan", because it contemplated the loaning of funds by the Reconstruction Finance Corporation, for use in aid of a purely intrastate project of local and not national concern. Such a loan not being within the powers delegated to Congress by the "general welfare" clause of the Constitution, and

being conditioned on the exercise of control by the Reconstruction Finance Corporation over the political subdivision to such an extent as to invade the sovereign rights of the State.

V.

Summary of the Argument.

POINT A.

The decision of the Circuit Court of Appeals is contrary to prior decisions of this Honorable Court.

POINT B.

The Act of May 24, 1934, violates the Tenth Amendment of the Federal Constitution which provides that powers not delegated to the United States by the Constitution, nor prohibited to it by the states, are reserved to the states.

POINT C.

The Act of May 24, 1934, is not such a uniform law on the subject of bankruptcies throughout the United States as is authorized by subdivision (4), Section VIII, Article I of the Federal Constitution.

POINT D.

The Act of May 24, 1934, and the statute passed by the State of Texas in pursuance thereof (Chap. 107, 44th Legislature) constitute a violation of subdivision (1) of Section X of Article I of the Federal Constitution, and Section XVI of Article I of the State Constitution, which inhibit the passage by the State of a law impairing the obligation of contracts, either with or without the consent of the Congress.

POINT E.

The Act of May 24, 1934, is violative of the Fifth Amendment to the Federal Constitution because its effect is to deprive these bondholders of their property without due process of law.

POINT F.

The plan of readjustment tendered by the District in its petition showed on its face that the District could not "take all action necessary to carry out the plan," as required by the Muncipal Bankruptcy Act, because under the terms of Title II, Section 36, of the Agricultural Adjustment Act known as the Emergency Farm Mortgage Act of 1933, and authorizing loans by the Reconstruction Finance Corporation in "refinancing of agricultural improvement district indebtedness for the benefit of farmers," the loan to be made by the Reconstruction Finance Corporation was conditioned upon the exercise of control by the Reconstruction Finance Corporation over the governmental powers of the District in a manner that would invade the sovereignty of the State, and the making of such a loan of federal funds was beyond the power of Congress to authorize.

ARGUMENT.

(Italics are ours unless otherwise indicated.)

POINT A.

Conflict with Decisions of this Honorable Court.

The Act of May 24, 1934, conflicts with decisions of this Honorable Court in several respects.

There are three recent decisions of the Supreme Court of the United States which are vitally important in determin-

ing the limitations and extensions of the powers of Congress to enact legislation dealing with either organizations or fields of activity that are subject to state legislation.

The case of *Hopkins Federal Savings & Loan Association* v. *Cleary*, 296 U. S. 315, in which Mr. Justice Cardozo wrote the opinion of the Supreme Court, gave full recognition to the principle that federal legislation could not, over the objection of the State of Wisconsin, authorize quasi public corporations, chartered by that State as State building and loan associations, to convert their organizations into federal savings and loan associations under the Home Owners' Loan Act of 1933. In that case the Court discussed the fact that the power of Congress over the creation and operation of such a quasi public corporation was certainly not exclusive, and said:

> "No one would say with reference to the business conducted by these petitioners, that Congress could prohibit the formation or continuance of such associations by the states, whatever may be its power to charter them itself. * * * The power of Congress in the premises, if there is any, being not exclusive, but at most concurrent, and the untrammeled coexistence of federal and state associations being a conceded possibility, we are constrained to the holding that *there has been an illegitimate encroachment by the government of the Nation upon a domain of activity set apart by the Constitution as the province of the states.*"

It is true that in that case the Court did not pass on what would have been the effect if the State of Wisconsin had not protested against the attempted conversion of the associations. However, it is pointed out that there was no statute passed by the Legislature of the State of Wisconsin for the purpose of preventing the application of the federal act to associations chartered by that State, and yet the Court treated the protest of the Banking Commission of

that State as sufficient to prevent the application of the Act, and further said:

> "If nonassenting shareholders or creditors were parties to these suits, the question would be urgent whether property interests may be so transformed consistently with the restraints of the Fifth Amendment. * * * Shareholders and creditors being absent, we have instead the question whether *consistently with the Tenth Amendment* the change may be made under license of the central government against the protest of the State."

In the case of *United States* v. *Butler*, 56 Sup. Ct. Rep. 312, opinion in which was written by Mr. Justice Roberts, the Court in passing upon the constitutionality of the Agricultural Adjustment Act, gave consideration to whether the plan of operation outlined by the Act was compulsory or merely voluntary in its nature, and in that connection had occasion to pass on what would be the effect of an objection by a state to the application of the Act to its citizens. The Court on this subject said:

> "But it is said that there is a wide difference in another respect, between compulsory regulation of the local affairs of a state's citizens and the mere making of a contract relating to their conduct; *that, if any state objects, it may declare the contract void and thus prevent those under the state's jurisdiction from complying with its terms.* The argument is plainly fallacious. The United States can make the contract only if the federal power to tax and to appropriate reaches the subject matter of the contract. If this does reach the subject matter, its exertion can not be displaced by state action. To say otherwise is to deny the supremacy of the laws of the United States; to make them subordinate to those of a state. This would reverse the cardinal principle embodied in the constitu-

> tion and substitute one which declares that congress may only effectively legislate as to matters within federal competence when the states do not dissent."

(The foregoing language is quoted in the dissenting opinion of Judge Soper in the very recent case of *Greenwood County* v. *Duke Power Co.*, decided by the United States Circuit Court of Appeals for the Fourth Circuit, with this accompanying statement: "The party to the present contract with the government is not a private citizen, but a municipality or agency of the state which consents to the invasion of the state's domain; but, it is submitted that the state no more than the individual may be induced by gift to break down the barriers which confine the Federal Government within constitutional limits.")

The preceding quotation from the case of *United States* v. *Butler* forces the conclusion either that the power of the Federal Government to pass bankruptcy laws applicable to political subdivisions of states is supreme (so that state acquiescence or objection is immaterial), or else that the power cannot reach the subject at all, even with affirmative action of any one state. Here the Court was dealing with the power of taxation, which is certainly a fundamental power of the national government and certainly equal in importance to any other power conferred by the Federal Constitution, but the power to levy and collect an excise tax such as it was contended that the Agricultural Adjustment Act contemplated is subject to the requirement of geographical uniformity just as is the power to pass bankruptcy legislation.

In the case of *United States* v. *Constantine*, 296 U. S. 287, this Honorable Court determined that failure to pay a so-called excise tax of $1,000 imposed by Section 701 of the Revenue Act of 1926 upon retail dealers of malt liquor conducting their businesses in any State or place having

laws prohibiting such a business, could not be made the basis of a prosecution. The Court there held that the Act imposing the so-called excise tax merely imposed it as a penalty for violation of the State laws, and that as such the Act was beyond the limits of Federal power. In affirming the judgment of the Circuit Court of Appeals, which reversed the judgment of the trial court upholding a judgment of conviction by the trial Court, this Honorable Court said:

> "We think the suggestion has never been made—certainly never entertained by this Court—that the United States may impose cumulative penalties above and beyond those specified by state law for infractions of the State's Criminal Code by its own citizens."

The Court concluded its opinion as follows:

> "In view of what has been said we do not consider the contention that the law is bad for want of the uniformity of operation required by article 1, Sec. 8, of the Constitution."

The opinion of the Circuit Court of Appeals in that case used the following language on the applicability of the uniformity requirement, should the measure in question be construed as an excise tax:

> "Significant, too, is its ambulatory character, applying not by application in particular localities of a rule geographically uniform, but by its own terms now here, now there, in this or that state, this or that locality according to state laws or local conditions. * * * When, in addition to all of this, the doubtful constitutionality of the section for want of geographical uniformity, if construed as a taxing act, is considered, we think assurance is made doubly sure that it should not be so construed."

In addition to the decisions of this Honorable Court in the three cases hereinabove discussed, dealing with the relation of Federal legislation to matters of purely State or local concern, attention is directed to the case of *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, dealing with the first Frazier-Lemke Bankruptcy Act, relating to the institution of bankruptcy proceedings by farmers. This case will be discussed hereafter under Point E, dealing with the application of the Fifth Amendment.

At this juncture we proceed with argument under Point B, dealing with the application of the Tenth Amendment.

POINT B.

Invasion of State's Rights Reserved Under Tenth Amendment.

We have set out in the petition for certiorari a reference to the constitutional and statutory provisions of the State of Texas, relating to the powers and obligations of irrigation and water improvement districts. The appendix to this brief will set forth the controlling provisions for convenient reference. At present we merely direct attention to the fact that the Texas Constitution and the Texas statutes expressly provide for the organization of such districts, the issuance of bonds by them, and the levy and assessment of taxes "to pay the interest thereon and provide a sinking fund for the redemption thereof." (Texas Constitution, Sec. 52, Article 3; Sec. 59a, Article XVI: Revised Civil Statutes of Texas, 1925, Articles 7622-7807 "Water Improvement Districts": Revised Civil Statutes of Texas, 1911, Articles 5012-5107, "Irrigation Districts"; Opinion of United States District Court at page 115 of the record.)

The Supreme Court of Texas has expressly upheld the power of such districts to levy and collect taxes. *Texas Pacific Railway Company* v. *Ward County Irrigation Dis-*

trict No. One, 112 Texas 593. It has also recognized that such districts are governmental agencies engaged in the performance of a public purpose. *Parker* v. *El Paso Water Improvement District No. One,* 116 Texas 631, citing *Fallbrook Irrigation District* v. *Bradley,* 164 U. S. 112. It has also denied a writ of error in a decision by a Texas Court of Civil Appeals upholding the validity of a tax levied by the Irrigation District for the purpose of paying its bonds wherein that court said:

> "It will be observed from what we have said that these taxes are in no sense local or special, based on special benefits received by the property taxed, but are general and *ad valorem,* levied by a public corporation to pay bonds that have been lawfully issued and validated by a decree of a court of competent jurisdiction." *Hester and Roberts* v. *Donna Irrigation District, Hidalgo County No.* 1, 239 S. W. 992.

The Texas statutes provide that all bonds of such districts shall be validated by a decree of court before issuance. Articles 7703-7706.

The Supreme Court of Texas has recognized that the rights of a bondholder include the right to compel collection of taxes by the municipality issuing the bonds. *Voorhies* v. *City of Houston,* 70 Texas 331. The Federal Courts recognize the same rule. *Hidalgo County et al.* v. *Morey,* 74 F. (2d) 101. (See also *Von Hoffman* v. *City of Quincy,* 4 Wallace 535.)

The tax being sanctioned by the State, and provision therefor being required as a prerequisite to the issuance of the bonds, and the bonds being issued for the performance of a public purpose by a governmental agency of the State, neither the State nor the Federal Government can interfere therewith; the State, because it cannot impair the obligation of contracts, and the Federal Government, because it cannot impair the sovereignty of the State.

Bondholders have a right to rely on the performance of such obligations. *Rorick* v. *Commissioners of Everglades Drainage District*, 57 F. (2d) 1048; *Meriwether* v. *Garrett*, 102 U. S. 472.

This Honorable Court has recognized that the Federal Government cannot in the exercise of any delegated power, interfere with the control of the States over their fiscal affairs. In *Lane County* v. *Oregon*, 7 Wallace 71, the Court held that a State statute requiring payment of county taxes in gold or silver coin would prevail over a Federal statute purporting to make notes of the United States legal tender and said:

> "If, therefore, the condition of any State, in the judgment of its legislature, requires the collection of taxes in kind, that is to say, by the delivery to the proper officers of a certain proportion of products, or in gold and silver bullion, or in gold and silver coin, it is not easy to see upon what principle the national legislature can interfere with the exercise, to that end, of this power, original in the States, and *never as yet surrendered.*"

The Court further said that the power of taxation "is an essential function of the Government."

If the Federal Government in the exercise of its power to control the currency cannot interfere with State fiscal affairs, how much less should it be able to do so through permitting or inviting political subdivisions of the State to invoke bankruptcy powers of the Federal Government.

This Honorable Court has recognized that irrigation, drainage, and related projects are all governmental functions of the States wherein they are exercised. *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112; *O'Neill* v. *Leamer*, 239 U. S. 244; *Houck* v. *Little River Drainage District*, 239 U. S. 254.

The maintenance of the faith and credit of the State involves the maintenance of the faith and credit of its political subdivisions. *Anderson County Road District No. Eight* v. *Pollard*, 116 Texas 547; *Tom Green County* v. *Moody, Attorney General*, 116 Texas 299 (citing the decisions of this Honorable Court mentioned in the preceding paragraph); *Robbins* v. *Limestone County*, 114 Texas 356.

The power to "lay and collect taxes" under the Federal Constitution is embraced in the same section as the power to pass "uniform laws on the subject of bankruptcies throughout the United States" (Section VIII, Article I). It has long been recognized that this power of taxation cannot be exercised in a manner that invades State sovereignty. *Buffington* v. *Day*, 11 Wallace 113; *Pollock* v. *Farmers Loan & Trust Company*, 157 U. S. 429, 158 U. S. 601.

The law under consideration in the *Pollock* case provided "that nothing herein contained shall apply to States, counties, or municipalities." This is similar to a clause in the Municipal Bankruptcy Act about not interfering with State control of political subdivisions. Nevertheless the Court held that a tax on the income of municipal bonds would constitute an invasion of State sovereignty, and could not be sustained, pointing out that it would interfere with the State's "power to borrow * * * and that the tax in question is a tax on the power of the states and their instrumentalities to borrow money, and consequently repugnant to the Constitution."

Article 7712, Revised Civil Statutes, 1925 (Texas) expressly provides that the directors of such a district "shall levy a tax upon all property within such District sufficient in amount to pay the interest on such bonds, together with an additional amount to be placed in the sinking fund, suf-

ficient to discharge and redeem said bonds at their maturity." As said in the case of *Meriwether* v. *Garrett, supra,* the levying of taxes "is a high act of sovereignty * * * When a tax has been authorized by law to meet them (obligations), it has compelled the officers of assessment to proceed and levy the tax, and the officers of collection to proceed and collect it, and apply the proceeds. In some instances, where the tax was the inducement and consideration of the contract, all attempts at its repeal have been held invalid."

Even in the case of *Willcuts, Collector* v. *Bunn,* 282 U. S. 216, in which an income tax on the profit derived from the sale of municipal bonds was upheld, the Court pointed out that no Federal tax could be upheld against the bonds themselves, or the income derived therefrom in the form of interest, saying:

> "And a tax upon the obligations of a State or of its political subdivisions falls within the constitutional prohibition *as a tax upon the exercise of the borrowing power of the State.*"

The constitutional and statutory provisions in Texas amounted to a pledge of the faith and credit of the District for the payment of the bonds, which in effect, pledges the resources of the District. See *Rorick* v. *Commissioners of Everglades Drainage District, supra,* dealing with a similar Florida district; and *Village of Kent* v. *United States,* 113 Fed. 232.

It cannot be successfully contended that the bonds issued and the taxes authorized to be levied for their payment were not acts of sovereignty in performance of governmental duties and the exercise of governmental capacities. *United States* v. *Railroad Company,* 17 Wallace 322. That case involved bonds issued by the City of Baltimore

under authority from the State, and it was held that the income therefrom could not be taxed, the Court saying:

> "The action is no less a portion of the sovereign authority, when it is done through the agency of a town or city corporation."

The Internal Revenue Act there under consideration, like the present Municipal Bankruptcy Act, attempted to protect against the charge of unconstitutionality by providing that it was not the intent to affect such corporations "in the exercise only of functions strictly belonging to them in their ordinary governmental and municipal capacity". The bonds there were issued for the purpose of aiding in the construction of a railroad entering the City.

Certainly bonds issued for the purpose of enabling the District to perform the only governmental function it was organized to perform, to-wit: irrigation, cannot be considered as issued in a proprietary instead of a governmental capacity.

The mere declaration in Section 80 (k) of the Municipal Bankruptcy Act that "nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any political subdivision thereof in the exercise of its political or governmental powers" cannot save that Act from the charge of unconstitutionality, because the Act seeks to reach such political subdivision, not only when the State consents, but also when the State has not exercised its power "to require the approval by any governmental agency of the State of the filing of any petition," or has no existing fiscal agency whose affirmative approval is required under the terms of the Act.

The Circuit Court of Appeals seems to rest its opinion entirely upon the effect of Section 80 (k) above mentioned. It incidentally refers to the fact that while a sovereign

State may not be sued without its consent, it may invoke the jurisdiction of the Federal Court. Obviously the action of a State in subjecting itself to the jurisdiction of the Federal Court, does not change or alter its sovereign rights. The State can no more impair its obligations through action in the Federal Court, than it can through action in the State Court. The protection of the Constitution, both national and State, surrounds both forms. The State can waive venue or jurisdiction, and appear in the Federal Court, but cannot thereby submit itself to the application of a Federal Act which has no power otherwise to reach it. As pointed out in the case of *Clark* v. *Barnard*, 108 U. S. 447:

> "The immunity from suit belonging to a State * * * is a personal privilege which it may waive at pleasure."

The Circuit Court of Appeals apparently attempts to draw a distinction between a State, and its political subdivisions, citing cases to the effect that counties and municipalities are suable in the Federal Court despite the adoption of the Eleventh Amendment to the Federal Constitution. The three cases cited to that effect all base the conclusion announced upon the fact that in each of the states involved therein, state legislation had authorized such political subdivisions to enter into contracts, and to be sued thereon in the courts of the state. Having the power to contract, and being suable, this Honorable Court merely concluded in those cases that the Federal Courts could exercise jurisdiction likewise, and that the Eleventh Amendment did not prohibit the exercise of this jurisdiction, because it was confined expressly in its application to forbidding suits against any "one of the United States."

But for the Eleventh Amendment states would also be suable. The mere fact that the amendment does not pro-

hibit suits against counties and other political subdivisions does not change their nature or characteristics.

No distinction has been drawn between the powers of the Federal Government in levying taxes against state bonds, or bonds issued by political subdivisions of a State. *Pollock* v. *Farmers Loan & Trust Company, supra; United States* v. *B. & Q. Railroad Company, supra.*

The opinion of the Circuit Court of Appeals really recognizes that there is no valid distinction between the state and its political subdivisions, with reference to the application of the Municipal Bankruptcy Act, except for the language of Section 80 (k) heretofore mentioned. The court says:

> "It is apparent that the Act of May 24, 1934, was not intended to interfere with the *sovereign rights of any State.* Full control over the *liquidation of the indebtedness of any political subdivision is reserved to the state* under the provision of Section 80 (k) above quoted. If the state chooses to exercise her sovereign authority, she has the right to do so and the Act is without effect."

If this is true then the application of the Act to political subdivisions *depends upon a waiver of State sovereignty, which cannot be waived except by constitutional amendment delegating power to the Federal Government.*

Only by such a constitutional amendment, making the law applicable to all of the states of the Union, could the Municipal Bankruptcy Act be made uniform throughout the United States. This leads to Point C.

POINT C.

Lack of Geographical Uniformity in the Application of the Municipal Bankruptcy Act.

Section 80 (k) of the Act reflects that it does not purport to apply to political subdivisions of states which have established fiscal agencies exercising authority over such

subdivisions, unless such fiscal agency consents to the filing of the petition; and further that the Act does not purport to apply to political subdivisions of states which pass legislation requiring the approval by any agency of the state of the filing of any petition, unless such approval is obtained. In other words, as is said by the Circuit Court of Appeals:

> "If the State chooses to exercise her sovereign authority she has the right to do so, and the Act is without effect."

This being true, the Act depends for its application not upon the will of Congress, but upon the will of the Legislature of each State.

It is difficult to imagine that a bankruptcy law would be upheld as uniform, should it provide that its only application was to citizens of states which had consented for its citizens to invoke the national act.

In the case of *International Shoe Company* v. *Pinkus*, 278 U. S. 261, this Honorable Court held an Arkansas statute, dealing with insolvents, to be unconstitutional because it invaded the field occupied by the National Bankruptcy Act. In that case the Court said:

> "*The national purpose to establish uniformity necessarily excludes state regulation.* * * * States may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulation."

Of course, State exemption laws may be and are recognized by the National Bankruptcy Act; but those State laws do not remove the insolvent from the jurisdiction of the bankruptcy court, and they give to the creditor whatever he could reach by execution under the State laws. Furthermore, such exemption laws of the State cannot be

given retroactive effect, even by national legislation, so as to impair the obligation of contracts, under the guise of bankruptcy legislation. In *Re Dillard*, 7 Fed. Cases, 3912, citing *Gunn* v. *Barry*, 82 U. S. 610.

While this Honorable Court did not take occasion to pass on the question of uniformity involved in the case of *United States* v. *Constantine, supra,* because it was determined that the so-called excise tax which Constantine had failed to pay was not in truth an excise tax, but a mere penalty. The opinion of the Circuit Court of Appeals in that case indicated that if construed as an excise tax, the Act imposing it would be lacking in the required uniformity, because under its terms it was only to apply in states or municipalities having their own prohibition laws.

In the decision of the cases known as the *Head Money Cases,* 112 U. S. 580, this Honorable Court had occasion to pass on the requirement of uniformity in the constitutional provision relating to the power of Congress to lay and collect duties, imposts and excise taxes. While the Court in that case held that a tax imposed upon the owners of vessels bringing passengers from foreign ports into a port of the United States, met the requirement of uniformity, it was pointed out that this was so because the tax "*operates precisely alike in every port* of the United States where such passengers can be landed." The Court further said:

> "The tax is uniform when it operates with the same force and effect in every place *where the subject of it is found.*"

Obviously the Municipal Bankruptcy Act does not apply in every State of the Union which has political subdivisions that could invoke the Act, but will only apply in such States as may not object to its application. Furthermore, one District within a State may be permitted by the State

to invoke the Act, and another District may be denied that privilege.

In passing on the constitutionality of the new Frazier-Lemke Act, Judge Atwell of the United States District Court for the Northern District of Texas had occasion to discuss the constitutionality of the following section of that Act:

> "This title is hereby declared to be an emergency measure, and if in the judgment of the court such emergency ceases to exist in its locality, then the court in its discretion, may shorten the stay of proceedings herein provided for and proceed to liquidate the estate. (Paragraph 6, 11 U. S. C. A., Sec. 203 S (6))."

In the case under consideration styled *In re Slaughter*, 12 Fed. Supp. 206, Judge Atwell said, of this section:

> "It clearly lacks that territorial uniformity which every national law must have. There is no legal way to have a statute applicable in Kaufman county and inapplicable in Potter county, *or alive in Texas and dead in the Dakotas.* The law must be universal, in so far as it reaches or touches the geography of the nation, and likewise it must be uniform in its application to a given class."

Judge Kennnerly of the United States District Court for the Southern District of Texas in passing on the constitutionality of the new Frazier-Lemke Act concluded that the amended act did not obviate the objection to its constitutionality pointed out in the *Radford* case, and, therefore, that it was unnecessary to rule upon whether the foregoing clause of that Act met the uniformity requirement. (*In re Tschoepe*, decided February 1, 1936.)

(That Act has also been held unconstitutional by the two judges of the United States District Court for the Southern District of Illinois in a joint opinion. (*In re Young*, 12 Fed. Supp. 30.)

In the case of *Florida* v. *Mellon*, 273 U. S. 12, this Honorable Court had before it for consideration the constitutionality of the Federal Estate Tax Act, authorizing a credit on such estate taxes of any inheritance tax paid by a decedent's estate under a state law. In that case the State of Florida contended that the Federal Act was not uniform in its application because Florida could not under the State Constitution adopt any inheritance tax law. The Court in holding that this situation did not impair the uniformity of the Federal Act, said:

> "The contention that the Federal tax is not uniform because other States impose inheritance taxes while Florida does not, is without merit. Congress cannot accommodate its legislation to the conflicting or dissimilar laws of the several States nor control the diverse conditions to be found in the various States which necessarily work unlike results from the enforcement of the same tax. All that the Constitution (Art. I, Sec. 8, cl. 1) requires is that the law shall be uniform in the sense that by its provisions *the rule of liability shall be the same in all parts of the United States.*"

Obviously if the Federal Act under consideration in that case had held that it should apply only to States that would permit its application, the Act would not meet the requirement "the rule of liability shall be the same in all parts of the United States." Yet the Municipal Bankruptcy Act attempts to make its application dependent, not upon the will of Congress, but upon the will of the State legislatures.

POINT D.

State Legislation, Giving Consent to the Application of the Municipal Bankruptcy Act, Would Impair the Obligation of Contracts Contrary to Section X of Article I of the Federal Constitution and Section XVI of Article I of the Texas Constitution.

Special Assistant Attorney General Weston prepared an opinion which was transmitted by the Attorney General to the House Judiciary Committee, when the Municipal Bankruptcy Act was under consideration there. We take the liberty of quoting two sentences from that opinion:

> "The Constitution probably authorizes Congress to enact a bankruptcy law which permits insolvent municipal corporations to effect a composition of their debts through the medium of a Federal Bankruptcy Court, provided the law does not allow the court to interfere with their governmental functions and *provided State law authorizes the municipal corporation to take such action.* * * * But in my opinion it is beyond the power of Congress, *even with State consent,* to enact any bankruptcy law which is applicable to the States themselves or to political subdivisions which are merely departments or branches of the State Government."

We contend that under the authorities heretofore cited the District involved in this case is a mere arm of the State and cannot be subjected to Federal control through bankruptcy legislation or otherwise. However, if it be considered that this is the type of District which State legislation could authorize to invoke the Municipal Bankruptcy Act, and such legislation is necessary to bring about that result, then such State legislation in this instance necessarily brings about an impairment of the obligations held by

your petitioners and, therefore, violates both the Federal and State Constitutions.

The fact that Federal legislation, in the form of the Municipal Bankruptcy Act, supplements the State Act (or is supplemented by the State Act) is immaterial from this standpoint. Subdivision 1 of Section X of Article I of the Federal Constitution does not, like subdivisions 2 and 3 of Section X, provide that a State may pass the prohibited laws *with the consent of Congress.* It prohibits *without qualification* the passage by any State of a law impairing the obligation of contracts, whereas subdivisions 2 and 3 merely prohibit the passage of certain other types of laws "without the consent of the Congress."

Special Assistant Attorney General Weston emphasized the importance of language of this nature in constitutional provisions when he said:

> "It follows that, if the Constitution does not confer this power upon Congress, its lack of authority cannot be supplied by acquiescence of the State. The situation is entirely different where the Constitution itself provides that Congress can act only with State consent, or that the States can act only if Congress consents. (See Article I, Section X, Clauses 2 and 3; Article IV, Section III, Clause 1.)"

Of course, the opinion from which the foregoing quotation is taken, related to the application of the Bankruptcy Act. It expressly classes water districts as among those instrumentalities of the State which cannot be thrown into bankruptcy even with State consent.

The case of *In re Dillard, supra,* establishes that a Federal Bankruptcy Act cannot validate impairment of obligations by State legislation.

In re Rahrer, 140 U. S. 545, involved an Act of Congress which provided that intoxicating liquors transported into a State, should upon arrival in such State, be subject to

operation of the State laws, to the same extent as though such liquors had been produced in the State. This Honorable Court held that a statute of the State of Kansas could apply to prohibit the sale of such liquors in the original packages in view of the Federal statutes. In so holding, the Court pointed out that the State statute was one which it was competent for the State legislature to pass, but which could not operate upon the articles in question until the passage of the Act of Congress; that Congress did not use *terms of permission to the State to act*, but simply removed an impediment to the enforcement of the State laws; that in so doing Congress had not attempted to delegate the power to regulate commerce, or to exercise any power reserved to the States, or to grant a power not possessed by the States, or to adopt State laws.

The Court further said:

> "It does not admit of argument that Congress can neither delegate its own powers nor enlarge those of a State."

The Court pointed out the distinction under Section X of Article I of the Constitution, between the powers enumerated, which the States are forbidden to exercise in any event and those powers covered by Clauses 2 and 3, which may be exercised "with the consent of Congress". Obviously, no State can pass laws having the effect of impairing the obligation of contracts, either with or without the consent of Congress, and obviously Congress cannot delegate to the State its power to enact bankruptcy legislation which must be uniform throughout the United States.

As said in *International Shoe Company* v. *Pinkus, supra*, "states may not pass or enforce laws to interfere with or complement the bankruptcy act, or to provide additional or auxiliary regulations".

A State insolvency law cannot impair the obligations of debtors contracted before the enactment of the law. *Sturges v. Crowninshield*, 12 Wheat. 257. See also *Von Hoffman* v. *City of Quincy, supra.*

Section XVI of Article I of the Constitution of the State of Texas, provides:

> "No bill of attainder, *ex post facto* law, retroactive law, or any law impairing the obligation of contracts, shall be made."

The Legislature of the State of Texas in 1935 passed a statute seeking to specifically authorize political subdivisions of the State to take advantage of the Municipal Bankruptcy Act (Chapter 107, 44th Legislature, Regular Session; Article 1024A, Vernon's Anno. Civil Statutes, 1935). This Act is set out in the appendix to this brief. It specifically deals with "all municipalities, political subdivisions and taxing districts in this State which have power to incur indebtedness"; and authorizes them "to adopt all proceedings and do any and all acts necessary or convenient to fully avail such municipality, political subdivision and taxing district of the provisions of such acts of Congress."

The Supreme Court of Texas had occasion to apply this section of the Constitution in connection with certain moratorium statutes that had been passed by the Texas Legislature, in the case of *Travelers Insurance Company* v. *Marshall*, 124 Texas 45. This decision was rendered after the decision of the Supreme Court of the United States in *Home Building & Loan Association* v. *Blaisdell* (290 U. S. 398). Chief Justice Cureton of the Supreme Court of Texas held the Texas statute unconstitutional, saying that even if the *Blaisdell* case should be interpreted as holding that the Federal Constitution "contains no express limitations on the police powers of the states as such", the State

Constitution plainly subordinates the police powers to the express provision of the Constitution against impairment of contractual obligations. We quote the following from that opinion:

> "The Court cannot be authorized to make a contract for the parties, and its attempt to do so necessarily impairs the original obligation, in view of the authorities. The right to enter into lawful contracts is one of the guaranties of the Texas Constitution. This guaranty is one of the essential liberties of the citizen, and cannot be nullified by legislative enactment empowering courts to substantially rewrite his agreements. 9 Texas Jurisprudence, p. 522, Sec. 90, p. 543, Sec. 108."

See also *Cattle Raisers Loan Co.* v. *Doan,* 86 S. W. (2d) 252, approved by the Supreme Court of Texas in 86 S. W. (2d) 1082.

In the case of *Pryor et al., Commissioners of Sabougla Drainage District* v. *Goza,* 159 Southern 99, the Supreme Court of Mississippi held unconstitutional a State statute which sought to authorize the readjustment of indebtedness of such political subdivisions in the case of insolvency. The court held that such a statute would impair the obligation of the contract evidenced by the bonds issued by the District, and said:

> "The contract clause of the Federal Constitution applies, not only to state action impairing the obligation of contracts of persons, partnerships, and corporations engaged in private business, but to contracts by the state itself and all of its political subdivisions, including counties, municipalities, and other taxing districts."

The court held that it was unnecessary for it to pass on the constitutionality of the Federal Act known as the Mu-

nicipal Bankruptcy Act, because that Act had not been invoked by the District.

The bankruptcy powers of the Federal Government are, of course, subject to the Fifth Amendment to the Constitution of the United States, and we now pass to a consideration of Point E, dealing with the application of that amendment to the Municipal Bankruptcy Act.

POINT E.

The Municipal Bankruptcy Act Violates the Fifth Amendment to the Federal Constitution.

As stated in the opinion of the District Judge, and unchallenged in the opinion of the Circuit Court of Appeals:

> "The bonds are contracts, constitutionally and statutorily executed by the State of Texas, through petitioner, its local agency, secured by taxes levied against property in the District, which taxes are secured by lien against such property. Article 7622 to 7807, inclusive, Texas Revised Civil Statutes."

The State Constitution provides that such a District shall "levy and collect such taxes to pay the interest thereon and to provide a sinking fund for the redemption thereof, as the Legislature may authorize, and in such manner as it may authorize the same" (Section 52, Article III). The Constitution also provides that the annual assessment made upon land and property shall be a special lien thereon. Section 15, Article VIII. Texas Statutes Articles 7712 and 7675 provide for the levy of such taxes and that they shall constitute a lien on the property.

Bondholders are entitled to compel the levy and collection of taxes and the enforcement of tax liens by sale if necessary, in order to protect their rights as bondholders. *Voorhies* v. *City of Houston*, 70 Texas 331; *Hidalgo County et al.* v. *Morey*, 74 F. (2d) 101.

Persons cannot be deprived of their property rights without due process of law, even through the exercise of the powers of bankruptcy conferred on the Federal Government. *Louisville Joint Stock Land Bank* v. *Radford, supra.*

The bondholders in the case at bar are entitled to invoke the Fifth Amendment, because an interference with the taxing power of the District or a discharge of the obligation of the District to levy and collect taxes to pay the bonds would deprive the bondholders of a part of their security. *Rorick* v. *Commissioners of Everglades Drainage District*, 57 F. (2d) 1048; *Los Angeles County* v. *Rockhold*, 44 Pac. (2d) 340. (See also *Von Hoffman* v. *City of Quincy, supra.*)

In the *Louisville Joint Stock Land Bank* case, *supra*, the Court held that the Frazier-Lemke Bankruptcy Act was unconstitutional because it deprived the Bank of the following property rights recognized by the law of Kentucky:

(1) The right to retain the lien,

(2) The right to realize upon the security,

(3) The right to determine when a sale should be held,

(4) The right to protect its interest in the property by bidding at such sale.

These four grounds are all applicable here as follows:

(1) The bondholders have the right to insist on the levy and assessment of taxes secured by lien on the property within the District.

(2) The bondholders have the right to insist on the collection of the taxes, or foreclosure of the lien.

(3) The right exists in the bondholders to have sales of the security made as often as the taxes became delinquent and remain unpaid.

(4) The right exists in the bondholders to protect their interests by purchasing the property covered by the tax lien.

While it is true that these bondholders are only owners of part of the bonds, and that a major portion of the bonds, in amount, is held by other bondholders, nevertheless this proceeding was instituted under a law which only required 30% of the bondholders to agree to the filing of the petition, and under a law which provides that interlocutory orders may issue to put the plan of readjustment into temporary effect without the concurrence of a majority. True, the law requires that 66⅔% of the bondholders in amount, approve the plan before it can be finally confirmed, but their consent can be virtually forced by the filing of the petition by a minority of 30%.

Until the amendments to the Bankruptcy Act passed in 1933 and 1934 the principle applicable to compositions in bankruptcy had never been extended to the interests of secured creditors in their security. It was injected in the amendments dealing with (1) individual debtors, (2) agricultural compositions, (3) railroads engaged in interstate commerce, (4) corporate reorganizations, and (5) the Municipal Bankruptcy Act.

The case of *Continental Illinois National Bank & Trust Company* v. *Chicago, Rock Island, Pacific Railway,* 294 U. S. 648, brought under the Railroad Bankruptcy Act, upheld the constitutionality of that Act in so far as it was then before the Court. However, the opinion in the later case of *Louisville Joint Stock Land Bank, supra,* referred to the railroad case as one wherein "the District Court was held to have the power to enjoin temporarily the sale

of pledged securities", and quoted therefrom as follows:

> "The injunction here in no way impairs the lein, or disturbs the preferred rank of the pledgees. It does no more than suspend the enforcement of the lien by a sale of the collateral pending further action."

In the *Railroad* case this Honorable Court pointed out that before the acceptance of any plan—

> "The Interstate Commerce Commission is directed to hold a public hearing, following which it shall render a report recommending a plan which 'will, in its opinion be equitable, will not discriminate unfairly in favor of any class of creditors or stockholders, will be financially advisable * * * and will be compatible with the public interest.' "

It was further pointed out in that case that the debtor contended that the value of the collateral securing the notes was substantially in excess of the loan; that a forced sale of the collateral might result in a substantial deficiency judgment.

No provision is made in the Municipal Bankruptcy Act for any type of hearing before the plan is put into temporary effect, unless 5% of the bondholders, in amount, consolidate for the purpose of launching a contest of the plan. A small bondholder is, therefore, without any relief except on final hearing on the question of the proposed confirmation of the plan, and only then by intervention under court direction.

The hearing provided for before the Interstate Commerce Commission, under the Railroad Act, at least insures some consideration of the plan before it is launched, whereas under the Municipal Bankruptcy Act the agency of the State wherein the political subdivision lies may approve the filing of the petition in bankruptcy without

affording the bondholder any type of hearing. The Federal Act prescribes no hearing before any such agency as may be set up by the State, and none is prescribed by the State Act.

The Railroad Act expressly provides that the plan must furnish "adequate protection for the realization by them (the creditors) of the value of their securities, liens and claims."

Mr. Honnold in his work entitled "Supreme Court Law," makes the following statement under the heading of "Due Process," Vol. II, page 840:

> "The due process clause requires that State action shall be consistent with the fundamental principles of liberty and justice. It requires notice and opportunity to be heard, but not always proceedings in court or the privilege of an appellate review."

It is not contended by the District in this case that these bondholders are creditors of a class not to be affected by the plan of readjustment, nor is it alleged that a majority of the creditors desired the institution of this proceeding to force the acceptance of the plan of readjustment of the bonds, upon the dissenting bondholders. The petition merely alleges that more than 30% of the bondholders have accepted the plan and that it will be able to secure an approval of more than 66⅔% at the time that the plan comes up for confirmation (R. 10 and 11). It further alleges that the plan, dependent upon the securing of a loan from the Reconstruction Finance Corporation, would enable the District to refund the bonds of said District at 49.8% on the dollar "which said authorization would enable your petitioner to reduce its bond taxes at least two-thirds and would make the District financially sound" (R. 6).

The Municipal Bankruptcy Act provides that it "shall apply as fully to taxing districts and their creditors, whose

interest or debts have been acquired or incurred prior to such date, as to taxing districts and their creditors, whose interest or debts are acquired or incurred after such date." (Section 80 (j)). It further specifies that a plan of readjustments "shall include provisions modifying or altering the right of creditors generally, or any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise." (Section 80 (b)). It further provides that acceptance of the plan by a majority of any class of creditors is unnecessary "if provision is made in the plan for the protection of the interests, claims, or liens of such creditor, or class of creditors." (Section 80(d). last clause).

In Re Tennessee Publishing Company, a case decided by the Sixth Circuit Court of Appeals on February 13, 1936, involved a similar provision of Section 77(b) of the Bankruptcy Act, relating to corporate reorganizations. That court held unconstitutional a provision of that Act, relating to the putting into effect of a plan of reorganization, without the consent of a majority of a class of creditors affected thereby. Subsection (b)5(d) of that Act provides for the protection of the lien of nonassenting creditors "by such method as will in the opinion of the judge, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection." It will be noted that this clause is quite similar to the last clause of Section 80(d) of the Municipal Bankruptcy Act quoted above.

The Sixth Circuit Court of Appeals held that a plan tendered under Subsection (b)5 of the Act, authorizing corporate reorganization, violated the due process clause of the Federal Constitution, and cited as authority the case of *Louisville Bank* v. *Radford, supra.* It also distinguished

the case of *Continental Bank* v. *Rock Island Railway, supra,* by saying:

> "That case, however, goes no further in its consideration of the due process clause of the Fifth Amendment, than to hold the statutory provision permitting delay in the enforcement of contracts affect only the remedy, and deals with a statute which does not permit adjustment of liens without lienholders' consent."

POINT F.

The Petition Revealed that the Plan of Readjustment was Dependent Upon a Loan to the District by the Reconstruction Finance Corporation Under Conditions, Imposed by Section 36 of the Agricultural Adjustment Act, and by the Loan Contract, Which Invaded the Exercise of Governmental Powers of the District.

The petition alleges that the Reconstruction Finance Corporation will enable the District to carry out the plan of readjustment by making a loan to it of $400,000 "for the purpose of refunding the bonds of said District at 49.8¢ on the dollar" (Record page 6). It further reflects the various conditions which the Reconstruction Finance Corporation will impose in making the loan. (See loan agreement as alleged, Record page 13 *et seq.*) Section 36 of the Agricultural Adjustment Act (48 Statutes, page 49, as amended; Section 403 of Title 43, U. S. C. A.) authorizes the Reconstruction Finance Corporation to make loans to such Districts upon certain conditions, including the following:

> "3. The borrower shall agree not to issue during the term of the loan any other bonds so secured except with the consent of the corporation. * * *
>
> "5. In the case of a loan to reduce or refinance its outstanding indebtedness the borrower shall agree, to

the satisfaction of the corporation, to reduce, in so far as it lawfully may, the annual taxes, assessments, and other charges imposed by it for or on account of the project by an amount proportional to the reduction in the corresponding annual requirements for the principal and interest of its outstanding indebtedness by reason of the operation of this section."

Part 4 of the Act is entitled "Refinancing of Agricultural Improvement District Indebtedness for the Benefit of Farmers; Loans by Reconstruction Finance Corporation." Under this Act no loan will be made unless "a substantial reduction will be brought about in the amount of the outstanding indebtedness of the applicant."

The conditions imposed in connection with the making of the loan, as alleged in the plaintiff's petition, embrace many features that give the Reconstruction Finance Corporation control over the political subdivision. Those conditions were set forth in the resolution adopted by the Reconstruction Finance Corporation and approved by the District (R. 12 to 28, inclusive).

The terms and conditions were numbered in the resolution, and we refer to some of them by number as follows:

1. All loans shall be disbursed within such time as may be fixed by the "chief or acting chief of the Drainage, Levee, and Irrigation Division (hereinafter referred to as the Division Chief)."

5(b). The Division Chief may make the loan directly to consenting owners of bonds (without their incurring any individual liability thereon) in the event that the Division Chief wishes to "keep any or all of the deposited securities (of the District) alive for a greater or lesser length of time in order to maintain a parity of rights." Under such circumstances the deposited bonds are to be considered as outstanding obligations of the District, and though the

District is not a party to the loan, it is to pay the interest thereon.

8(a). The District is not to issue any other bonds having similar security to the new bonds or the old securities pledged to the Reconstruction Finance Corporation, "except with the consent of this Corporation"; and the District will pay to the Corporation the amount by which its collections exceed its current obligations and will reduce its annual taxes proportional to the reduction in the corresponding annual requirements for principal and interest of its outstanding indebtedness.

8(b). The District will not incur any indebtedness unless it can pay cash therefor from normal revenue and "will not issue any tax anticipation warrants, notes or other obligations, of any kind without first securing the written consent of this Corporation."

8(c). The District will give the Corporation notice of any meeting of its governing body and the Corporation "shall have the right to have such meetings attended by any authorized representative."

8(j). The District will at all times give the Corporation "full access to and copies of all records, reports and files of the District, and its governing authority."

9. Other conditions precedent to the making of the loan are that the District shall have complied with the requirements of the Division Chief as to reassessment of the benefits upon the lands within the District, and as to *adjustment or collection of taxes,* or assessments that are now delinquent; and the District shall also comply with any requirements of the Division Chief regarding the *exclusion of lands from the District which he deems unproductive,* or for other reasons considers should not be included in the District.

The resolution of the District shows that it "assents and agrees to all the terms and conditions" (R. 27 and 28).

Obviously the foregoing conditions attach to the making of the loan and give the Federal Agency control over the State Agency in many respects which are incompatible with State sovereignty. Furthermore, they call for delegation of powers by the political subdivision of the State which have been delegated to it by the State, but which in turn cannot be delegated by it to another agency. See *Bowers v. City of Taylor et al.*, 16 S. W. (2d) 520 (24 S. W. (2d) 816 on rehearing), a decision by the Commission of Appeals of Texas, adopted by the Supreme Court of Texas. We quote from that case in 16 S. W. (2d), as follows:

> "The principle is well settled that a city cannot by contract or otherwise surrender its governmental or legislative functions, nor can it legally enter into any contract which will embarrass or control its legislative powers and duties or which amount to an abdication of its governmental function or of its police power."

This rule of law was recognized in the case of *Arkansas-Missouri Power Co. v. City of Kennett*, 78 F. (2d) 911. That case involved a controversy as to the power of the Federal Emergency Administration of Public Works to make a loan to a municipality in the State of Missouri. The Court held that the contract regarding the loan imposed certain conditions of a nature similar to those in the case at bar, which called for a delegation of the powers of the municipality to the Federal Agency, and held that such a contract was, therefore, unlawful.

There is no question about the right of your petitioners in the case at bar, to raise by demurrer the point as to the invalidity of the contract governing the loan to be made by the Reconstruction Finance Corporation to the District. Obviously, the question here is not one of a tax or burden that falls upon your petitioner because of the invalidity of

the contract; instead the question arises on the face of the petition and the plan of readjustment tendered by the District, because no plan can be confirmed by the Court unless it affirmatively appears that the District is authorized by law "to take all action necessary to carry out the plan". The showing must be made by the District, and if the petition reveals that the showing cannot be made the proceeding must collapse.

In this connection, we point out that the Reconstruction Finance Corporation is disbursing Federal funds and that those funds can only be used to provide for the general welfare of the United States. In declaring the Agricultural Adjustment Act unconstitutional because of the regulatory features involved in *United States* v. *Butler, supra*, this Honorable Court said:

> "We are not now required to ascertain the scope of the phrase 'general welfare of the United States' or to determine whether an appropriation in aid of agriculture falls within it."

We submit that even if an appropriation in aid of agriculture might fall within the clause of the Constitution allowing the Federal Government to lay and collect taxes for the general welfare of the United States, it is going too far to contend that Federal funds may be advanced to local agricultural improvement districts, such as the one involved in this case, merely because of the claimed effect it might have "for the benefit of farmers". See *Missouri Public Service Company* v. *City of Concordia*, 8 Fed. Supp. 1, holding that loans by Public Works Administrator cannot be made for municipal projects, having no relation to interstate commerce.

Conclusion.

In conclusion we submit that this case is one calling for the exercise by this Court of its supervisory powers in

order that your petitioners may not be deprived of rights granted to them under the Federal Constitution and the State Constitution. The question involved is one which is of importance throughout the United States; and in the Fifth Circuit where this case arose there are two other States which have statutes similar to the Texas statutes (to-wit: the States of Florida and Louisiana) permitting their political subdivisions to invoke the Municipal Bankruptcy Act.

It is respectfully prayed that this Honorable Court grant a writ of certiorari and reverse the decree of the United States Circuit Court of Appeals, and affirm the decree of the United States District Court.

Respectfully submitted,

C. L. ASHTON,
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C. W. GRIFFIN,
A. G. GRIFFIN,
LEONARD E. WOOD,
J. W. TERRY,
Individually, and as Trustee for Rebecca Terry White,
By PALMER HUTCHESON,
J. W. TERRY,
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March, 1936.

APPENDIX.

Municipal Debt Readjustment.

Chapter IX.

Provisions for the Emergency Temporary Aid of Insolvent Public Debtors and to Preserve the Assets Thereof and for Other Related Purposes.

Declaration of Policy.

Sec. 78. There is hereby found, determined, and declared to exist a national emergency caused by increasing financial difficulties of many local governmental units, which renders imperative the further exercise of the bankruptcy powers of the Congress of the United States.

Additional Jurisdiction.

Sec. 79. Until the expiration of two years from the date this chapter takes effect, in addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in this chapter of this Act.

Municipal-Debt Readjustments.

Sec. 80. (a) Any municipality or other political subdivision of any State, including (but not hereby limiting the generality of the foregoing) any county, city, borough, village, parish, town, or township, unincorporated tax or special assessment district, and any school, drainage, irrigation, reclamation, levee, sewer, or paving, sanitary, port, improvement or other districts (hereinafter referred to as a "taxing district"), may file a petition stating that the taxing district is insolvent or unable to meet its debts as they mature, and that it desires to effect a plan of readjustment of its debts. The petition shall be filed with the court in whose territorial jurisdiction the taxing district or the major part thereof is located and for any such district having no officials of its own the petition shall be filed by the

municipality or political subdivision, the officials of which have power to contract on behalf of said district or to levy the special assessments within such district. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in addition to the fees required to be collected by the clerk under other chapters of this Act. The petition shall state that a plan of readjustment has been prepared, is filed and submitted with the petition, and that creditors of the taxing district owning not less than 30 per cent in the case of drainage, irrigation, reclamation and levee districts and owning not less than 51 per cent in the case of all other taxing districts, in amount of the bonds, notes or certificates of indebtedness of the taxing district affected by the plan, excluding bonds, notes, or certificates of indebtedness owned, held, or controlled by the taxing district in a fund or otherwise, have accepted it in writing. The petition shall be accompanied with such written acceptance and with a list of all known creditors of the taxing district, together with their addresses so far as known to the taxing district, and description of their respective claims showing separately those who have accepted the plan of readjustment, together with their separate addresses, the contents of which list shall not constitute admissions by the taxing districts in a proceeding under this chapter or otherwise. Upon the filing of such a petition the judge shall enter an order either approving it as properly filed under this chapter, if satisfied that such petition complies with this chapter and has been filed in good faith, or dismissing it, if not so satisfied. If creditors holding 5 per centum in amount of the bonds, notes, or certificates of indebtedness shall, within ninety days after the first publication of the notice provided for in subdivision (c), clause (1), of this chapter, appear and controvert the facts alleged in the petition, the judge shall decide the issues presented, and unless the material allegations of the petition are sustained, shall dismiss the petition.

(b) A plan of readjustment within the meaning of this chapter (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them,

secured or unsecured, either through the issuance of new securities of any character or otherwise; and (2) may contain such other provisions and agreements, not inconsistent with this chapter, as the parties may desire.

No creditor shall be deemed to be affected by any plan of readjustment unless the same shall affect his interests materially and adversely, and in case any controversy shall arise as to whether any creditor or class thereof shall or shall not be affected, the issue shall be determined by the judge after hearing upon notice to the parties interested.

The term "securities" shall include bonds, notes, and other evidences of indebtedness, either secured or unsecured, and certificates of beneficial interests in property. The term "creditors" shall include for all purposes of this chapter all holders of claims, debts, securities, liens or other interests of whatever character against the taxing district or its property or revenues, including claims under executory contracts and for future rent, whether or not such claims would otherwise constitute provable claims under this Act, and all holders of judgments rendered against such taxing district but excepting claims for salaries and wages of officers and employees of the taxing district.

For all purposes of this chapter any creditor may act in person or by a duly authorized agent or committee. Where any committee, organization, group, or individual shall assume to act for or on behalf of creditors, such committee, organization, group, or individual shall first file with the court in which the proceeding is pending a list of the creditors represented by such committee, organization, group, or individual, together with a statement of the amount, class, and character of the indebtedness held by each such creditor, and shall accompany the same with a copy of the contract or agreement entered into between such committee, organization, group, or individual and the creditors represented by it or them, which contracts shall disclose all compensation to be received directly or indirectly by such agent or committee.

(c) Upon approving the petition or at any time thereafter the judge (1) shall require the taxing district to give such notice as the order may direct to creditors, and to cause publication, to be made at least once a week for three successive weeks, of a hearing, to be held within ninety days after the approval of the petition for the purpose of considering the plan of readjustment filed with the petition and of any changes therein or modifications thereof which may be proposed; (2) if a plan of readjustment is not accepted and approved within such reasonable period as the judge may fix, or, if accepted and approved, is not confirmed, the judge may, after hearing, either extend such period not exceeding one year from the date of the filing of the petition, or dismiss the proceedings as the interests of the creditors may equitably require: *Provided, however,* That if a plan shall not be accepted and approved within one year from the date of the filing of the petition, the judge, after hearing, may continue the proceeding for not exceeding two years from the date of the filing of the petition, with the written consent of creditors of the taxing district holding more than one half in amount of all claims affected by the plan; (3) shall require the taxing district at such time or times as the judge may direct, and in lieu of the schedules required by section 7 of this Act, to file such schedules and submit such other information as may be necessary to disclose the conduct of the affairs of the taxing district and the fairness of any proposed plan; (4) shall determine a reasonable time and manner in which the claims and interests of creditors may be filed or evidenced, and, for the purposes of the plan and its acceptance, the division of creditors into classes according to the nature of their respective claims and interests; and may, for the purposes of such classification, classify as an unsecured claim the amount of any secured claim in excess of the value of the security thereof, such value to be determined in accordance with the provisions of chapter 57, clause (h), of this Act [§9148]; (5) may, with the authorized written approval of the taxing district, direct the rejection of contracts of the taxing district executory in whole or in part; (6) shall cause reasonable notice of such determination and of all hearings for

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the consideration of the proposed plan, or the dismissal of the proceedings, or the allowances of fees or expenses, to be given creditors by publication or otherwise; (7) may require the taxing district to open its books, records, and files to the inspection of any creditor of the taxing district during reasonable business hours; (8) may allow a reasonable compensation for the services rendered and reimbursement for the actual and necessary expenses incurred in connection with the proceeding and the payment of special masters, readjustment managers and committees or other representatives of creditors of the taxing district, and the attorneys or agents of any of the foregoing; and appeals may be taken, from the orders making such allowances, to the circuit court of appeals for the circuit in which the proceeding undef this chapter is pending, independently of other appeals which may be taken in the proceedings, and such appeals shall be heard summarily: *Provided, however,* That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the taxing district or paid from any revenues, property, or funds except in the manner and in such sums, if any, as may be provided for in the plan of readjustment; (9) in addition to the provisions of chapter II of this Act for the staying of pending suits, the court may upon notice enjoin or stay until after final decree, the commencement or continuation of suits against the taxing district, or any officer or inhabitant of the taxing district, on account of the indebtedness of such taxing district, or to enforce any lien or to enforce levy of taxes for the payment of any such indebtedness: *Provided, however,* That the judge may enter an interlocutory decree providing that the plan shall be temporarily operative with respect to all indebtedness affected thereby and that the payment of the principal or interest, or both, of such indebtedness shall be temporarily postponed or extended or otherwise readjusted in the same manner and upon the same terms as if such plan had been finally confirmed and put into effect, and upon the entry of such decree the principal or interest, or both, of such indebtedness which has otherwise become due, or which would otherwise be-

come due, shall not be or become due or payable, and the payment of all such indebtedness shall be postponed during the period in which such decree shall remain in force; and (10) may refer any matters to a special master, for consideration and report upon specified issues; but (11) shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the taxing district, or (b) any of the property or revenues of the taxing district necessary in the opinion of the judge for essential governmental purposes, or (c) any income-producing property, unless the plan of readjustment so provides. The taxing district shall be heard on all questions. Any creditor shall be heard on the question of the proposed confirmation of the plan, and, upon filing a petition for leave to intervene, on such other questions arising in the proceeding as the judge shall determine.

(d) The plan of readjustment shall not be confirmed until it has been accepted in writing, filed in the proceeding, by or on behalf of creditors whose claims have been allowed holding two thirds in amount of the claims of each class whose claims have been allowed and would be affected by the plan, and by creditors holding 66 2/3 per cent in the case of drainage, irrigation, reclamation and levee districts and creditors holding 75 per cent in the case of all other taxing districts in amount of the claims of all classes of the taxing district affected by the plan, but excluding claims owned, held, or controlled by a taxing district, and such plan has been accepted and approved by the taxing district in a writing filed in the proceeding, signed in its name by an authorized authority: *Provided, however,* That it shall not be requisite to the confirmation of the plan that there be such acceptance by any creditor or class of creditors (a) whose claims are not affected by the plan, or (b) if the plan makes provision for the payment of their claims in cash in full, or (c) if provision is made in the plan for the protection of the interests, claims, or liens of such creditors or class of creditors.

(e) After hearing such objections as may be made to the plan, the judge shall confirm the plan if satisfied that

(1) it is fair, equitable, and for the best interests of the creditors, and does not discriminate unfairly in favor of any class of creditors; (2) complies with the provisions of sub-division (b) of this chapter; (3) has been accepted and approved as required by the provisions of subdivision (d) of this chapter; (4) all amounts to be paid by the taxing district for services or expenses incident to the readjustment have been fully disclosed and are reasonable; (5) the offer of the plan and its acceptance are in good faith; and (6) the taxing district is authorized by law, upon confirmation of the plan, to take all action necessary to carry out the plan. Before a plan is confirmed, changes and modifications may be made therein, with the approval of the judge after hearing upon notice to creditors, subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor, and if any creditor having such right of withdrawal shall not withdraw within such period, he shall be deemed to have accepted the plan as changed or modified: *Provided, however,* That the plan as changed or modified shall comply with all the provisions of this subdivision.

(f) Upon such confirmation the provisions of the plan and of the order of confirmation shall be binding upon (1) the taxing district, and (2) all creditors, secured or unsecured, whether or not affected by the plan, and whether or not their claims shall have been filed or evidenced, and if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have accepted it.

(g) In the event the judge shall disapprove the plan he shall file an opinion stating his reasons for such disapproval. If he approve the plan, the final decree shall discharge the taxing district from those debts and liabilities dealt with in the plan except as provided in the plan; and upon the entry of such decree the jurisdiction of the court in such proceeding shall cease.

(h) A certified copy of the final decree or of an order confirming a plan of readjustment, or of any other decree or order entered in a proceeding under this chapter, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made. A certified copy of an order directing the transfer of any property dealt with by the plan, shall be evidence of the transfer of title accordingly, and if recorded as conveyances are recorded shall impart the same notice that a deed, if recorded, would impart.

(i) In proceedings under this chapter and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the taxing district and the rights and liabilities of creditors, and of all persons with respect to the taxing district and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the petition of the taxing district was approved.

(j) This chapter shall take effect and be in force from and after the date of the approval of this amendatory Act and shall apply as fully to taxing districts and their creditors, whose interests or debts have been acquired or incurred prior to such date as to taxing districts and their creditors, whose interests or debts are acquired or incurred after such date.

(k) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any political subdivision thereof in the exercise of its political or governmental powers, including expenditures therefor, and including the power to require the approval by any governmental agency of the State of the filing of any petition hereunder and of any plan of readjustment, and whenever there shall exist or shall hereafter be created under the law of any State any agency of such State authorized to exercise supervision or control over the fiscal affairs of all or any political subdivisions thereof, and whenever such agency has assumed such supervision or control over any political subdivision, then no petition of such political subdvision may be received here-

under unless accompanied by the written approval of such agency, and no plan of readjustment shall be put into temporary effect or finally confirmed without the written approval of such agency of such plans.

(l) If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, or the application of such provision to other persons or circumstances, shall not be affected thereby.

Approved May 24, 1934.

Title 43, Chapter 403.

United States Code.

Refinancing agricultural improvement districts; loans by Reconstruction Finance Corporation authorized. The Reconstruction Finance Corporation is authorized and empowered to make loans as hereinafter provided, in an aggregate amount not exceeding $125,000,000 to or for the benefit of drainage districts, levee districts, levee and drainage districts, irrigation districts, and similar districts, mutual non-profit companies and incorporated water users' associations duly organized under the laws of any State, and to or for the benefit of political subdivisions of States, which prior to May 12, 1933, have completed projects devoted chiefly to the improvement of lands for agricultural purposes. Such loans shall be made for the purpose of enabling any such district, political subdivision, company, or association (hereafter referred to as the "borrower") to reduce and refinance its outstanding indebtedness incurred in connection with any such projects; or, whether or not it has any such indebtedness, to purchase or otherwise acquire in connection with such project storage reservoirs or dams or sites therefor, or additional water rights, or canals, ditches, or rights-of-way for the conduct of water, or other works or appurtenances necessary for the delivery of water, provided such purchase or acquisition is not intended to bring additional lands into production. Such loans shall be subject to the same terms and conditions as

loans made under section 605 of Title 15; except that (1) the term of any such loan shall not exceed forty years; (2) each such loan shall be secured by bonds, notes, or other obligations which are a lien on the real property within the project or on the assessments, taxes, or other charges imposed by the borrower pursuant to State law, or by such other collateral as may be acceptable to the Corporation; (3) the borrower shall agree not to issue during the term of the loan any other bonds so secured except with the consent of the Corporation; (4) the borrower shall agree, insofar as it may lawfully do so, that so long as any part of such loan shall remain unpaid the borrower will in each year apply to the repayment of such loan or to the purchase or redemption of the obligations issued to evidence such loan, an amount equal to the amount by which the assessments, taxes, and other charges collected by it exceed (a) the cost of operation and maintenance of the project, (b) the debt charges on its outstanding obligations, and (c) provision for such reasonable reserves as may be approved by the Corporation; and (5) in the case of a loan to reduce or refinance its outstanding indebtedness, the borrower shall agree, to the satisfaction of the Corporation, to reduce, insofar as it lawfully may, the annual taxes, assessments, and other charges imposed by it for or on account of the project by an amount proportional to the reduction in the corresponding annual requirements for principal and interest of its outstanding indebtedness by reason of the operation of this section. No loan shall be made under this section until the Reconstruction Finance Corporation (A) has caused an appraisal to be made of the property securing and/or underlying the outstanding bonds of the applicant, (B) has determined that the project of the applicant is economically sound, and (C) in the case of a loan to reduce or refinance the outstanding indebtedness of an applicant, has been satisfied that an agreement has been entered into between the applicant and holders of its outstanding bonds or other obligations under which the applicant will be able to purchase or refund all or a major portion of such bonds or other obligations at a price determined by the Corporation to be reasonable after taking into

consideration the average market price of such bonds over the six months' period ending March 1, 1933, and under which a substantial reduction will be brought about in the amount of the outstanding indebtedness of the applicant.

When any loan is authorized pursuant to the provisions of this section and it shall then or thereafter appear that repairs and necessary extensions or improvements to the project of such district, political subdivision, company, or association are necessary or desirable for the proper functioning of its project or for the further assurance of its ability to repay such loan, and if it shall also appear that such repairs and necessary extensions or improvements are not designed to bring new lands into production, the Corporation, within the limitation as to total amount provided in this section, may make an additional loan or loans to such district, political subdivision, company, or association for such purpose or purposes. When application therefor shall have been made by any such district, political subdivision, company, or association any loan authorized by this section may be made either to such district, political subdivision, company, or association or to the holders or representatives of the holders of their existing indebtedness, and such loans may be made upon promissory notes collateraled by the obligations of such district, political subdivision, company, or association or through the purchase of securities issued or to be issued by such district, political subdivision, company, or association. May 12, 1933, c. 25, Title II, #36, 48 Stat. 49, as amended June 16, 1933, c. 101, #19, 48 Stat. 308; June 19, 1934, c. 653, #11, 48 Stat. 1110; June 27, 1934, c. 851, 48 Stat. 1269.)

Article III, Section 52, Texas Constitution:

The legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the state, to lend its credit or to grant public money or thing of value in aid of, or to, any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company; provided, however, that under legislative provision any county, any political subdivision of a county, any number

of adjoining counties, or any political subdivision of the state, or any defined district now or hereafter to be described and defined within the state of Texas, and which may or may not include towns, villages or municipal corporations, upon a vote of a two-thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition to all other debts, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this constitution, and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the legislature may authorize, and in such manner as it may authorize the same, for the following purposes, to-wit:

(a) The improvement of rivers, creeks and streams to prevent overflows, and to permit of navigation thereof, or irrigation thereof, or in aid of such purposes.—

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purposes of irrigation, drainage or navigation, or in aid thereof.

(c) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof.

Article XVI, Section 59a, Texas Constitution:

Sec. 59a. The conservation and development of all of the natural resources of this state, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forest, water and hydro-electric power, the navigation of its inland and coastal waters, and

the preservation and conservation of all such natural resources of the state are each and all hereby declared public rights and duties; and the legislature shall pass all such laws as may be appropriate thereto.

(b) There may be created within the State of Texas, or the state may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

(c) The legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as may be prescribed by law and shall also, authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; provided the legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property tax-paying voters of such district and the proposition adopted.

Forty-Fourth Legislature—Regular Session.

Authorizing Municipalities, Political Subdivisions and Taxing Districts to Proceed Under Provisions of Federal Bankruptcy Laws.

(S. B. No. 4.)

5*u*

Chapter 107.

An Act authorizing municipalities, political subdivisions and taxing districts to proceed under the provisions of Federal Bankruptcy Laws enacted for the relief of such municipalities, political subdivisions and taxing districts; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That all municipalities, political subdivisions and taxing districts in this State which have power to incur indebtedness, either through action of their own governing bodies or through action of the governing bodies of counties or cities in which such political subdivisions or taxing districts are included, are hereby authorized to proceed under all laws enacted by the Congress of the United States under the Federal Bankruptcy powers, which laws have for their object the relief of municipal indebtedness, including H. R. 5950 of the Seventy-third Congress, entitled, "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, and acts amendatory thereof and supplementary thereto," approved May 24, 1934, and the officials and governing bodies of such municipalties, political subdivisions and taxing districts are authorized to adopt all proceedings and to do any and all acts necessary or convenient to fully avail such municipalities, political subdivisions and taxing districts of the provisions of such Acts of Congress.

SEC. 2. The public importance of this measure and the necessity for its enactment to relieve the acute financial embarrassment and to preserve the faith and credit of many municipalities, political subdivisions and taxing districts in this State, create an emergency and an imperative public necessity requiring the suspension of the Constitutional Rule requiring bills to be read on three separate days in each House, and said Rule is hereby suspended, and this

Act shall take effect and be in force from and after its passage, and it is so enacted.

Approved April 27, 1935.

Effective April 27, 1935.

(Article 1024a, Vernon's Annotated Revised Civil Statutes of the State of Texas, 1935 Supplement.)

Texas Revised Civil Statutes, 1925—

Art. 7622. Water Improvement Districts Established.—The county commissioners' court of any county in this State at any regular or called session thereof may establish one or more water improvement districts in their respective counties, or parts of such districts therein, in the manner hereinafter provided. Such districts may or may not include within their boundaries villages, towns, cities, and municipal corporations, or any part thereof, but no land shall be at the same time included within the boundaries of more than one water improvement district created under this chapter. Such districts when so established may make improvements or may purchase improvements already existing, or may purchase improvements and make additions thereto, and may issue bonds in payment therefor, as herein provided. Such districts being authorized to provide for the irrigation of the land included therein, and when operating under Section 59 of Article 16 of the Constitution, furnish water for domestic, power and commercial purposes. Such districts may be formed for co-operation with the United States under the Federal Reclamation Laws for the purpose of the construction of irrigation works, including drainage works, necessary to maintain the irrigability of the land for the purchase, extension operation or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. (Acts 2nd C. S., 1919, p. 65, part Sec. 1.)

Art. 7675. Taxes Remain Lien.—All lands and other property which have been returned delinquent, during the existence of such district, shall be subject to the provisions of this Act, and said taxes shall be and remain a lien upon said land, and upon all other property against which same were assessed, although the owner be unknown or though such

land be listed in the name of a person not the actual owner, and though the ownership be changed the land may be sold under the judgment of the court for all taxes, interest, penalty, and costs shown to be due by such assessment for any preceding year or years, provided the record owner of such land or lands at the date of filing such suit be made a party to such suit and be properly cited, and such districts shall have authority to file suits for the collection of taxes due upon land and also personal property or property of any character. No law providing for a period of limitation on debt or actions shall apply to such taxes, occurring after the formation of such district. (Acts 1st C. S., 1921, p. 149, Sec. 40.)

Art. 7703. Determine Validity.—Any such district in this State desiring to issue bonds in accordance with this chapter shall, before such bonds are offered for sale, bring an action in the district court in any county of the judicial district in which said district, or any part thereof, may be situated or in the district court of Travis County, to determine the validity of any such bonds, or such district contracting with the United States in accordance with this chapter, shall, if requested by the Secretary of the Interior, bring an action in said court to determine the validity of said contract. Such action shall be in the nature of a proceeding *in rem*, and jurisdiction of all parties interested may be had by publication of a general notice thereof once each week for at least two consecutive weeks in some paper of general circulation published in the county or counties in which such district is situated, and if no paper is published in the county then same shall be published in a paper in the nearest county thereto where a paper is published. Notice shall also be served upon the Attorney General of the State of Texas of the pendency of said action in the same manner as in civil suits. (Acts 2nd C. S., 1919, p. 72, Sec. 60.)

Art. 7706. Judgment Rendered.—Upon the trial of the issues made under the preceding article, if the judgment of the court shall be adverse to the district, then such judgment may be by said district accepted, and the error pointed out in such proceedings may be corrected in the manner

designated or directed by said court, and when so corrected, the judgment of the district court shall be rendered showing that said corrections had been made, and that the bonds issued thereunder, or the said contract with the United States, are binding obligations upon said district. And thereafter the judgment, when so finally made and entered, shall be received as *res adjudicata* in all cases arising in connection with said bonds or any interest due thereon, or in connection with the collection of moneys required by contract with the United States, and as to all matters pertaining to the organization and validity of said district, or pertaining to the validity of the bonds or of the said contract with the United States. (Id. Sec. 62.)

Art. 7712. Directors Levy Tax.—Whenever such bonds shall have been voted, the directors for such district shall levy a tax upon all property within such district sufficient in amount to pay the interest on such bonds together with an additional amount to be placed in the sinking fund, sufficient to discharge and redeem said bonds at their maturity, and said directors for such district shall annually levy or cause to be assessed and collected taxes upon all property within said district sufficient in amount to pay for the expenses for assessing and collecting such taxes. Whenever contract shall be made with the United States, taxes shall similarly be levied sufficient in amount to meet all installments, as they become payable, and interest, if any, and the directors shall cause due levy annually to be made until all such contracts and obligations shall have been discharged. Such bonds may be issued in serial form, or payable in installments, as determined by said directors, and such tax levy shall be sufficient if it provides an amount sufficient to pay the interest on such bonds and to meet the proportional amount of the principal of the next maturing series of said bonds, and the expenses of assessing and collecting such taxes for such year. (Id., p. 193, Sec. 68.)

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CHARLES ELMORE
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 859.

C. L. ASHTON, ET AL.,
Petitioners,

v.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. ONE.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

ADDITIONAL TEXAS STATUTES, ETC. FILED BY PETITIONERS.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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TEXAS REVISED CIVIL STATUTES, 1925.

Art. 7627. Petition feasible—recorded

If, at the hearing of such petition, it shall appear to the satisfaction of the court that the organization of such district and the construction or purchase, or the construction and purchase of the proposed irrigation system, or that co-

operation with the United States as in Article 7622 provided, is feasible and practicable, and that it is needed and would be a public benefit and a benefit to the lands included in the district then the court shall so find, and cause its findings to be entered of record; but if the court should find that the irrigation of lands in such district is not feasible and practicable and that it would not be a public benefit or is not needed or would not be a public utility, then the court may enter such findings of record and dismiss the petition at the cost of the petitioners.

Art. 7631. Who may vote

The manner of conducting elections herein provided for shall be governed by the general election laws of the State except as herein otherwise provided. At such election none but resident property taxpayers who are qualified voters under the laws of the State shall be entitled to vote. The county commissioners' court shall at the time of ordering said first election, by an order entered of record, create said proposed district, or the part thereof within said county, into one or more election precincts and shall name a polling place in each voting precinct, and shall appoint two judges and two clerks for each polling place, one of the judges to be designate (designated) as presiding judge. If any said officer so elected fail to serve, his place shall be filled in the manner provided by the general election laws. The court shall order printed one and one-half times as many ballots for said election as there are estimated to be qualified voters within such district. Said ballots for said election shall have printed thereon substantially the following: "For Water Improvement District," "Against Water Improvement District," "For Issuance of Notes of Said District," "Against Issuance of Notes of Said District," and said ballots shall contain five blank lines upon which to write names of persons voted for, for the office of director with a heading, "For Directors,

Five to be Elected." No other matter shall be placed on the ballot except the heading "Official Ballot."

Art. 7652. Directors to Control District.

The board of directors herein provided for shall have control over and management of all the affairs of such district, shall make all contracts pertaining thereto, and shall employ all necessary employees for the proper handling and operating of such districts, and especially may employ a general manager, an assessor and collector, attorneys, a bookkeeper, an engineer, water master and such other assistants and such other laborers as may be required, and they may also buy all necessary work animals, motors, pumps, engines, boilers, machinery and supplies as may be required in the erection, operation and repair of the improvements of the districts; a director may be employed as general manager, and at such compensation as may be fixed by the other four directors and when so employed he shall also perform the duties of a director, but he shall not receive the compensation in this Act provided to be paid to directors.

Art. 7655. Districts sued

All districts established under the provisions of this Act may sue and be sued in any and all courts of this State in the name of such district, and all courts of this State shall take judicial knowledge and notice of the establishment of such district and the boundaries thereof, and such districts shall contract and be contracted within the name of such districts.

Art. 7680. Attorney to bring suit

Twenty days after the publication of such notice or as soon thereafter as practicable, the directors for such water improvements or irrigation shall employ an attorney to bring suit in the name of the district in the district court

of said county for the purpose of collecting all taxes, interest, penalty, and costs due upon said land. Said petition shall describe all lands upon which taxes and penalties shall remain unpaid and the total amount of taxes and penalties due thereon with interest computed to the time fixed for the sale of said land at the rate of six (6%) per cent per annum, and shall pray for a judgment for said amount, and for the fixing, establishing and foreclosing of the lien existing against such land; that said lands be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief to which such district may be entitled under the law and facts. All suits to enforce the collection of taxes as provided in this Act shall take precedence and have priority over all other suits pending in the district court.

Art. 7718. Directors elected or appointed

There shall be held on the second Tuesday in January, 1924, and every two years thereafter, a general election, at which time there shall be elected five directors for such district, who shall be the elective officers for such district. Provided, that in all such districts containing not to exceed twelve thousand acres, in which sixty per cent or more of the lands in such district are owned by persons who do not reside in the district, the directors shall be apointed by the county commissioners' court of the county in which the district is situated. The term of office for such directors shall be two years and they shall be so appointed at the same time fixed for the election of directors in other districts and if for any reason the county commissioners' court is not in session at the time the said court shall convene and appoint said directors as soon thereafter as possible. The owners of the lands in such district may file with the county commissioners' court petitions expressing their choice of persons to be selected as directors, and if the owners of sixty per cent of such land, and if sixty per cent of such

land-owners, agree upon the persons to be appointed, the persons so agreed upon, if qualified, shall be appointed. Otherwise the said court shall appoint suitable qualified persons as such directors.

Art. 7723. Right of eminent domain

The right of eminent domain is hereby conferred upon all districts established under the provisions of this chapter for the purpose of condemning and acquiring the right of way over and through all lands, private and public, except as hereinafter indicated, necessary for making reservoirs, canals, laterals, and for pumping sites, drainage ditches, levees and all other improvements necessary and proper for such districts, and the authority hereby conferred shall authorize and empower such districts to condemn all lands, private and public, for the purposes herein indicated beyond the boundary of such districts and in any county within the State of Texas; the right of eminent domain shall not extend to land used for cemetery purposes, nor to property owned by any person, association of persons, corporation or water improvement district, and used for the purpose of supplying water under the laws of this State and necessary for the making of reservoirs, canals, laterals, pumping sites, levee and drainage ditches, or other appurtenant work by such owner. All such condemnation proceedings shall be under the direction of the directors and in the name of the irrigation or water improvement district, and the assessing of damages and all procedure with reference to condemnation, appeal and payment shall be in conformity with the statutes of the State and as provided in Title 52 of this Act relating to "Eminent Domain," and all such compensation and damages adjudicated in such condemnation proceedings shall be paid out of the construction and maintenance fund of said district.

Art. 7764. District validity created

The Act of the Twenty-ninth Legislature, being Chapter 50 of the Acts of 1905, and the Act of the Thirty-third Legislature, being Chapter 172 of the Acts of 1913, and Chapter 138 of the Acts of 1915, are hereby repealed. All districts heretofore organized under the terms and in accordance with the provisions of said Acts are hereby expressly declared to be validly created, organized, described and defined with boundaries as prescribed by the order of the commissioners' court organizing the same, or as the same have since been changed by the board of directors thereof in the manner provided by said Acts. Such districts, however, shall hereafter be governed by the provisions of this chapter; provided, however, that the duly constituted and qualified officers of such districts shall continue to perform the duties of such offices until the next general election held under the provisions of this chapter.

All bonds issued by such district, which have been declared valid by a judgment of the district court, shall be and be held to be valid and binding obligations of such district and not subject to attack, except for actual fraud. Any such district may change its name to the name herein provided for such districts by filing a declaration to that effect with the commissioners' court of the county or counties in which it is situated, and which said declaration shall be in the form of a deed of conveyance and duly acknowledged by the president and secretary of the district, and shall embody and set forth a copy of the minutes of said board of directors, and show the resolution adopted for the change of such name, and when such instrument shall have been so recorded, the name of such district shall hereby be changed.

All districts in the process of organization under existing laws repealed by this Act, are hereby declared to be valid districts and entitled to proceed in accordance with the provisions of said Act so repealed until the date upon

which this Act shall take effect after which, said districts shall be governed by the provisions of this chapter, and said districts shall change their name to conform to the provisions of this chapter by filing a declaration as above provided, in the office of the county clerk of the county or counties in which they are situated; and if they have not proceeded to the point of election of directors, they shall change such name by making application to the county commissioners' court having jurisdiction thereof, which said court shall change said name upon all orders thereafter issued relating to said district.

Art. 7769. Conditions of tax levied

The tax as levied in connection with the original issuance of bonds shall remain in force from year to year as the levy for that purpose, until a new levy shall be made. The board of directors may, from time to time, increase or diminish such tax so as to adjust the same to the taxable values of the property subject to taxation by the district and the amount to be collected, and in such manner as to raise an amount sufficient to pay the annual interest and sinking fund on said bonds then outstanding.

Art. 7791. Adopt rate of commissioners' court

Irrigation and water improvement districts operating under the provisions of laws of this State, and assessing taxes on the ad valorem basis, may, if they find it to their advantage, adopt the assessment and equalization of values of the property authorized therein for taxation as made and equalized by the county officers and the county commissioners' court and base the levy and collection of taxes on such assessment and equalization, and they shall also have authority to secure from the county tax assessor, a list of tax renditions as made to him covering the property within said district, and adopt same for the use and benefit of said district by causing the tax assessor and collector of

the district to compile same as the tax roll of the district instead of making independent assessment thereof. In the event that the district tax assessor and collector and district directors should for any reason fail or refuse to properly assess, equalize tax values, and prepare a tax roll for said district, as provided by law, then in that event the taxes levied at the time of issuance of bonds or other valid obligations of said district shall be collected by the county tax collector by entering on his rolls the said tax as against all property situated within such district for the year or years which the said district officers may have so failed to perform their said duties. If the tax levy is not sufficient because of decreased valuations same shall be increased by order of the commissioners' court.

The fund so collected by such county tax collector shall be deposited in the county depository as a special fund to be devoted to the payment of interest and sinking fund on such bonds or other obligations, and such fund shall be paid thereon upon order of the county commissioners' court. In the event any such county tax collector should fail or refuse to perform such duties then the holders of such securities, bonds or obligations, or any one or more of them, may compel him to do so by mandamus proceeding in the court of proper jurisdiction. The county tax collector shall be allowed, in addition to all other compensation now provided by law reasonable fees for the performance of such duty, to be fixed by the county commissioners' court, not to exceed, however, the rate of compensation fixed by law for the performance of like duties in the collection of county funds. Whenever such district officers shall fail to perform and discharge their duty, in the assessment and valuation of the property and collection of taxes, as hereinabove provided, then any bond holder or other person intersted in said district and the payment of their obligations may request the county commissioners' court to enter an order authorizing the county tax collector to perform the duties herein provided, and the county commissioners'

court shall investigate said matter, and if they find said conditions to exist shall enter an order directing the county tax collector to proceed as herein provided, until so ordered by the county commissioners' court. The provisions of this section are not intended to allow anyone to interfere with the duties of the district officers so long as they are in the active discharge of their duties, but such powers shall be exercised in the event such district officers shall not perform their duties or in the event of a vacancy in said offices.

In the event of any dispute arising as to whether or not said officers are so performing their duties, said matter may be determined by an action against said officers in the district court in the nature of a mandamus suit or in injunction proceedings restraining such officers from interfering with the collection of such taxes and the payment of said obligations by said county tax collector, and said county commissioners' Court of Civil Appeals and a judgment of the Court of Civil Appeals shall be final. In the event any such district embraces territory in two or more counties, the duties herein provided for the county tax collector and county commissioners' court shall be performed by such officers as to all such property lying within the county.

Art. 7797. May sue to protect bonds

All water improvement districts and irrigation districts heretofore or hereafter organized under the laws of the State being dependent upon their water rights and water supply to perform their public duties and to protect their bonds and other indebtedness created under the provisions of the law and to maintain their taxable values and assessable values, shall have full authority to maintain any action or suit for such purposes.

Art. 7798. May sue to protect bonds

The board of directors are hereby empowered to institute and maintain any suit or suits to protect the water

supply of said district and to prevent any unlawful or unwarranted interference with or diversion of such water supply. All water improvement districts and irrigation districts shall have full power and right to protect their water supply and all other rights and property and by proper suit to prevent any taking or interference with such water supply, of whatever nature or however acquired, necessary to the uses of such district or for the irrigation of the lands situated therein.

From Bankruptcy Law Service, Commerce Clearing House.

(Sec. 2803) *Constitutionality of New Law.*—The general power of Congress to extend bankruptcy jurisdiction to municipalities was upheld by the Attorney General in an opinion prepared by Charles Weston, Special Assistant, and issued on April 21, 1933. Excerpts from this opinion follow below:

Approaching the question whether Congress may enact any form of bankruptcy legislation applicable to municipalities, it should be borne in mind that Congress alone can effectively act. The Constitution prohibits the States from enacting any law "impairing the obligation of contracts," and this prohibition covers a law discharging insolvent debtors from liabilities incurred pror to its passage. (*Sturges v. Crowinshield*, 4 Wheat. 122) While it is conceivable that the Constitution may have intended to foreclose any legal method of altering the debts of insolvent municipalities and have intended a constitutional impasse in this field, it would seem that only cogent reasons should compel this conclusion. There being no express restriction upon the power of Congress and States being powerless to alter the existing debts of insolvent municipalities, the question arises as to whether there is any implied limitation upon the power of Congress.

Assuming that Congress cannot, even with State consent, enact a bankruptcy law applicable to a State, it does not

follow that the power of Congress is equally limited in the case of municipalities. Municipal corporations are of a dual character. They exercise both "powers which are governmental and powers which are of a private or business character," and in the latter capacity the municipality "is a mere legal entity or juristic person." (*Vilas* v. *Manila*, 220 U. S. 345, 356.)

A municipality is, in one respect, merely "a political subdivision of the State, created as a convenient agency for the exercise of such of the governmental powers of the State as may be entrusted to it," and the State may take, without compensation, property which the municipality holds and uses for governmental purposes. (*Trenton* v. *New Jersey*, 262 U. S. 182, 185, 186.) But it has been held that the State cannot take, without compensation, property which a municipality owns in its private and proprietary capacity. (*Mount Hope Cemetery* v. *Boston*, 158 U. S. 509; see *Hunter* v. *Pittsburgh*, 207 U. S. 161, 179.)

The proprietary capacity of municipalities has been fully recognized. When engaged in performing duties undertaken in this capacity, it is, like a private corporation, liable for the negligence of its agents (*Trenton* v. *New Jersey*, *supra*, p. 191.) In a large number of States the private property of municipalities, not held for governmental purposes, may be sold on execution. (Dillon, Municipal Corporations, 5th ed., sec. 992.) The United States and the several states are not, without express words, bound by general statutes of limitations, but a municipality is so bound. (*Metropolitan Railroad Co.* v. *District of Columbia*, 132 U. S. 1, 11.) When the Philippine Islands were ceded to the United States, the Spanish municipality of Manila was not obliterated by the extinction of the sovereign creating it, because a municipality, in exercising powers of a private or business character, "stands for the community in the administration of local affairs wholly beyond the sphere of the public purposes for which its governmental powers are conferred." (*Vilas* v. *Manila*, *supra*, pp. 355-356.)

It has been held that a municipal corporation may be prosecuted for violation of a State law regulating hours of employment. (*People* v. *City of Chicago*, 256 Ill. 558.) A libel in personam lies against a municipality for a maritime tort for which it is not liable under the local law, but such a libel does not lie against the State. (*Workman* v. *New York City*, 179 U. S. 552; Ex parte State of New York, No. 1, 256 U. S. 490.)

In my opinion the private or proprietary capacity of a municipality is sufficiently distinct and definite to bring it wthin the purview of the bankruptcy power of Congress where the State, as the representative of the municipality's governmental functions, has given its consent.

The objects of bankruptcy legislation, *i. e.*, the equitable distribution of assets and equal treatment of creditors on the one hand, and relief of debtors on the other, would seem to apply to insolvent municipal corporations. Where insolvency in fact exists, creditors need the aid of the bankruptcy court to secure equal treatment and the municipality requires some form of relief. The difficulties which may arise when a municipality becomes insolvent are strikingly illustrated by the facts presented in *Meriwether* v. *Garrett* (102 U. S. 472).

It may be contended that the immunity of municipalities from bankruptcy would tend to improve their credit and that therefore upon grounds of public policy the Constitution should be interpreted as conferring such immunity. But the credit of municipalities rests, in final analysis, upon belief in their solvency. Some loss is inevitable if liabilities actually exceed assets. The only bankruptcy relief which the creditor has reason to fear is that which is improper, that is, where bankruptcy is used as a cloak to escape obligations which could, with a proper exercise of good faith, be met. The mere possibility of abuse is not a sufficient ground for viewing bankruptcy relief to municipalities as necessarily opposed to public policy.

It is, therefore, concluded that general grounds of public policy do not indicate an implied limitation, in the case of municipalities, upon the power of Congress to deal with the subject of bankruptcies.

It may be urged that bankruptcy relief is inapplicable to a municipality, first, because its solvency cannot be measured or judged by the usual criteria and, second, because of the limited character of the relief available to creditors in a bankruptcy proceeding.

Solvency of a municipality cannot be measured by the value of its property, which, generally speaking, is immune from seizure by creditors and measuring solvency in terms of the relation between revenue and expenditure presents serious practical difficulties. Income is derived primarily from taxes. Theoretically there are no limits to exercise of the taxing power, but a city may be unable to collect taxes which it has levied or it may have reached the legal limits of its taxing power. Taxes cannot be raised to a point where they destroy the life of the community and hence destroy themselves, and there are limits to the extent to which a city can curtail services and expenditure. Where real estate values have collapsed, a city may be permanently unable to pay in full debts incurred when values were at higher levels. Today many municipalities are in default. It cannot be doubted, therefore, that a city may be unable to pay its debts in full and, if this be so, the difficulty in determining this fact is of no legal significance.

The maximum relief to creditors given by the pending bills is a composition under the approval of the court, plus jurisdiction to preserve the assets of the city until final approval or failure of composition. It is now settled that composition, without adjudication in bankruptcy, is a proper bankruptcy remedy. (See sec. 12 of the present Bankruptcy Act; *In re Reiman*, 20 Fed. cases 490.) Under section 75 of the present Bankruptcy Act (act of March 3, 1933, Public, No. 420, 72nd Cong.) any farmer may file a petition to effect a composition or extension of time to pay his debts

and no provision is made for a distribution of his property to creditors if the composition or extension proposal fails.

I conclude that bankruptcy relief is not in its nature inapplicable to municipalities.

It is an established constitutional principle that the United States and its governmental instrumentalities are free from taxation by the States and that the States and their governmental instrumentalities are likewise free from taxation by the United States. (*Indian Motocycle Co.* v. *United States*, 283 U. S. 570, 575.) The principle is "implied from the necessity of maintaining our dual system of government" and, since it springs from that necessity, "it does not extend beyond it." (*Board of Trustees of University of Illinois* v. *United States*, decided by the Supreme Court, Mar. 20, 1933.)

The foregoing principle has a bearing upon the question whether Congress may confer upon municipalities the requisite authority to file a petition under a Federal bankruptcy law, even though it is assumed that the law is enacted primarily for the benefit of the municipalities and that its operation would not interfere with their governmental functions. Congress cannot regulate, directly or indirectly, the fiscal policies of the States or their governmental agencies. The States are entitled to determine for themselves whether or not their municipalities shall be permitted to go into a Federal bankruptcy court and adjust their debts. For Congress to assume to grant this authority when it had not been given by the State itself, either by general law or by special enactment, would seem to constitute a prohibited encroachment into a domain where, under our Constitution, the State is supreme.

I conclude that the authority of a municipality to file a petition under a Federal bankruptcy act must be derived from State law and that the mere fact that the State has not prohibited such action is not sufficient.

It may be contended that, if the authority of municipalities to avail themselves of a Federal bankruptcy act must

be derived from the laws of the respective States, the law will not be uniform throughout the United States, as required by the Constitution.

Hanover National Bank v. *Moyses*, 186 U. S. 181, held that the bankruptcy law was not wanting in uniformity because it provided that exemptions should be determined by local law, the court saying (p. 188) that the uniformity required was "geographical and not personal."

The situation under consideration here is not the same as it would be if Congress passed a bankruptcy act which provided that the private debtors who came within its terms should be determined by local law. Even then the law would be geographically uniform as to all debtors within its scope. But in the case of municipalities the necessity of authorization under local law would be only what the Constitution required (if the views previously expressed are correct). Where Congress had provided for uniformity insofar as lay within its power there would be no want of the requisite uniformity.

Neither the United States nor the States may abdicate essential powers of government or delegate them to another sovereign. (See *In re Rahrer*, 140 U. S. 545, 560.) But a State law authorizing municipalities to file petitions under a Federal bankruptcy law which does not permit interference with the municipalities' governmental functions would not constitute such an abdication or delegation.

The United States may waive immunity against State action where such waiver does not extend to an essential power of government, and it necessarily follows that the States may waive like immunity against Federal action. It was early held that the United States could authorize the States to tax national banks, although without such authorization national banks are immune from State taxation (*Van Allen* v. *The Assessors*, 3 Wall. 573, 584). Congress may permit the States to regulate articles while still in the course of interstate commerce, regulation which would be invalid apart from such permission (*In re Rahrer, supra*).

And a State, by voluntarily submitting to the jurisdiction of the Federal courts, waives its immunity against suit and becomes bound to the same extent as any other litigant (*Clark* v. *Barnard*, 108 U. S. 436).

A State law authorizing municipalities to file a petition in bankruptcy would not be a law impairing the obligation of contracts. It would be the Federal, not the State, law which impaired the obligation of contracts, the State's consent operating merely as a partial waiver of its immunity against Federal action affecting its own powers of government.

In my opinion there is no constitutional bar against State legislation which permits municipalities to accept the provisions of a Federal bankruptcy law along the lines of the pending bills.

This memorandum has heretofore dealt only with the bankruptcy power of Congress with reference to municipal corporations, using this phrase in its strict and proper sense. A municipal corporation has been defined as "the body politic and corporate constituted by the incorporation of the inhabitants of a city or town for the purposes of local government thereof," and distinguished from a public or quasi corporation (sometimes called municipal corporation), "the principal purpose of whose creation is as an instrumentality of the State, and not for the regulation of the local and special affairs of a compact community." (Dillon, Municipal Corporations, 5th ed., pp. 58, 60.) A public or quasi corporation, such as a county or school or water district, is "but an instrumentality of the State," incorporated by the State "that it may the more effectually discharge its appointed duty." (*Ibid*, p. 67.) It has been said of them:

> "Their powers are not uniform in all the States, but these generally relate to the administration of justice, the support of the poor, the establishment and repair of highways, all of which are matters of state, as distinguished from municipal concern. They are purely auxiliaries of the State; and to the general statutes of

> the State they owe their creation, and the statutes confer upon them all the powers they possess, prescribe all the duties they owe, and impose all liabilities to which they are subject." (*Ibid.*)

Public or quasi corporations "rank low down in the scale or grade of corporate existence" and are to be distinguished from true municipal corporations "which are invested with more powers and endowed with special functions relating to the particular or local interests of the municipalities, and to this end are granted a larger measure of corporate life." (*Ibid.*) By reason of this difference "nearly all of the courts have drawn a marked line of distinction between municipal corporations and quasi corporations, in respect to their liability to persons injured by their neglect of duty; holding the former liable, without an express statute giving the action, in cases in which the latter are not considered liable unless made so by express legislative enactment." (*Ibid.*)

It seems foreign to the conception of bankruptcy to extend its remedies and the jurisdiction of its courts to a purely governmental body. Historically, at least, bankruptcy legislation represented remedies and relief which the sovereign granted to adjust the relations between creditor and debtor when private persons, individual or corporate, became insolvent. It was never supposed that the sovereign itself could adjust its own debts through the medium of the bankruptcy court. For the United States to provide such relief for the States would seem, under our dual system of government, equally beyond the scope of bankruptcy legislation. It would, therefore, seem that Congress could bring within the scope of its bankruptcy legislation only private debtors and those other corporate bodies which, although they exercise by delegation certain governmental functions, also have a definite private or proprietary capacity, in which capacity they have many of the characteristics of a private juristic person.

It was the particular purpose of our Constitution to mark out the respective boundaries of Federal and State power. True, the Federal Government, when exercising the powers conferred upon it by the Constitution, is supreme and Congress can make all laws necessary and proper for carrying into execution its express powers. But we are not here concerned with the extent of the incidental powers of Congress; the question is the extent of its express power. In my opinion the Constitution did not mean to permit Congress, through the medium of bankruptcy laws, to break down the boundaries between Federal and State power even if the States gave their consent. It follows that, if the Constitution does not confer this power upon Congress, its lack of authority cannot be supplied by acquiescence of the States. The situation is entirely different where the Constitution itself provides that Congress can act only with State consent or that the States can act only if Congress consents. (See art. I, sec. 10, clauses 2 and 3; art. IV, sec. 3, clause 1.)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 859

C. L. ASHTON ET AL.,

Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. ONE.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF RESPONDENT IN OPPOSITION.

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Attorneys for Respondent.

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF RESPONDENT IN OPPOSITION.

Summary Statement of Matters Involved.

The primary question to be determined in this case is whether the Circuit Court of Appeals of the Fifth Circuit is correct in holding the Municipal Bankruptcy Act constitutional, said opinion being set out in full in the records of this case, beginning on page 144 and continuing to and including page 150. Opinion rendered on March 3, 1936, by

Presiding Judge Foster before Foster, Sibley and Duncan.

It is to be noted in said opinion that Judge Foster upheld the Municipal Bankruptcy Act and decided that the United States Supreme Court in the case of the *Continental Illinois National Bank & Trust Company* v. *Chicago, Rock Island and Pacific Railway Company*, 294 U. S. 648, had virtually decided said law constitutional.

It is to be observed that petitioners attack the opinion of Judge Foster upon six grounds which are set forth on pages two and three of said application.

It is the contention of the District that the opinion of the Circuit Court of Appeals is correct insofar as the law involved in this case and since the opinion states a correct conclusion of law, that the application for writ of certiorari should be denied.

Summary of Argument.

Point A.

The decision of the Circuit Court of Appeals is not contrary to the prior decisions of this Honorable Court but on the contrary said opinion is in direct harmony with the decision of the *Continental Illinois National Bank & Trust Company* v. *Chicago, Rock Island and Pacific Railway Company* case which opinion was written by Judge Sutherland.

Point B.

The Act of May 24, 1934, being the act in question, does not violate the 10th Amendment of the Federal Constitution which provides powers not delegated to the United States by the Constitution are reserved to the States.

Point C.

The Act of May 24, 1934, being the act in question, does not impair the rights of the State in any way.

Point D.

The Act of May 24, 1934, being the act in question, does not violate the 5th Amendment to the Federal Constitution in that it deprives the bondholders of their property without due process of law, for the reason that due process of law is given and said act does not apply unless 66⅔ per cent of the bondholders agree thereto and it is conceded then to be for their best interest.

Point E.

The Reconstruction Finance Corporation has ample authority to come to the aid of the Irrigation Districts and advance money to said districts to enable the districts to carry on and furnish water to the farmers to make crops where they could not otherwise do so.

ARGUMENT.

POINT A.

The decision of the Circuit Court of Appeals is not contrary to the prior decisions of this Honorable Court but on the contrary said opinion is in direct harmony with the decision of the Continental Illinois National Bank & Trust Company v. Chicago, Rock Island and Pacific Railway Company case which opinion was written by Judge Sutherland.

The Act of May 24, 1934 does not conflict with the decisions of this Honorable Court and in this connection we wish to submit the latest decision upon this question which is commonly known as the Railroad Reorganization Act which was held constitutional on April 5, 1935, by an able opinion of Judge Sutherland, and in order that the Court may un-

derstand the similarity and broadness of the decision, we will give a view of the points of the similarity which we are paralleling for the convenience of this Court.

For the convenience of the Court, we will call the act which is held constitutional as the Railroad Act and the act under question the Summers-Wilcox act.

The railroad act, the constutionality of which has been upheld, contains the following provisions.	The Summers-Wilcox Act, the constutionality of which is yet to be decided, contains the following.
	FIRST—Parties.
This act includes corporations, railroads and other transportation companies.	This act includes municipalities, political subdivisions, cities, villages, townships, unincorporated taxing districts, schools, drainage, irrigation, reclamation, levy, sewer or paving, sanitary, port improvements, or other districts.
	SECOND—Cost.
This act requires that the petition must be filed with the clerk accompanied by a check of $100.00, which shall be in addition to the usual fees required under the act of bankruptcy.	This act requires the payment to the clerk of a filing fee of $100.00 which shall be in addition to the usual fees required to be collected by the court.

THIRD—Judge's Duty.

This act requires upon the filing of the petition, the Judge shall enter an order either approving it as properly filed under this section and that it has been filed in good faith, or he must dismiss it.	This act requires that the Judge shall enter an order approving it if properly filed, and if satisfied that it complies with the act and has been filed in good faith, or if not so satisfied, he must dismiss it.

FOURTH—The Payment of Debts.

This act requires that if the person is bankrupt or unable to meet its debts as they mature, they shall be entitled to the provisions of the act.	This act requires that if a District is unable to meet its debts as they mature, it shall be entitled to the benefits of said Act.

FIFTH—Plan of Settlement.

This act requires that a plan of settlement shall have been proposed affecting any one class and it shall not affect any other debts which do not come within the class.	This act requires that it shall affect only those of a certain class and shall not affect any other debts of a different class.

SIXTH—Notices.

This act requires notice shall be by publication.	This act requires that notice shall be by publication.

SEVENTH—Confirmation by Bondholder.

This act requires that the plan of settlement must be confirmed by 66⅔% of the holders of the indebtedness of the class involved.

This act requires that the plan of settlement must be approved by 66⅔% of the class of indebtedness involved in so far as taxing districts are concerned and 75% when it affects cities and towns.

EIGHTH—Confirmation by the Court.

This act requires that the court upon final hearing must find that the plan of settlement is for the best interests of the holders of the indebtedness and has been made in good faith before he approves said settlement.

This act requires that the court shall find that the plan has been made in good faith and that it is for the best interests of the bondholders and that the District is able to carry out its plan of settlement before the settlement is finally approved.

NINTH—Time Limit.

This act provides an emergency time limit.

This act provides an emergency time limit.

TENTH—Equity.

This act provides that the judge must be satisfied as to the good faith and filing and of the equity of the plan.

This act provided that the judge must find that the plan is fair, equitable, and for the best interest of the creditors and does not discriminate unfairly in favor of any claim of creditors.

ELEVENTH—Binding Effect.

This act provides that if the plan is approved by the Court, it shall be binding upon all of the non-assenting creditors of the same class.	This act provides that if the plan has been approved by the Judge, it shall be binding upon all of the non-assenting creditors of the same class.

It will be understood from the parallel references that the two acts are absolutely parallel in so far as purpose and results are concerned, the only material difference is that the Railroad Act applies only to corporations, while the Sumners-Wilcox Act extends to municipalities and taxing agencies, but this difference will be discussed in a different point of this brief.

We believe that a casual glance of the similarities, that the constitutionality of the Act will at once become apparent. We wish however, to give a few quotations to some of the things mentioned by Judge Sutherland in the Railroad opinion. It is first to be noted that the allegation of the railroad in so far as its bankruptcy is concerned, uses the following language.

"Unable to meet its debts as they mature."

Judge Sutherland, in his opinion, says that the act "Permits any railroad corporation which is insolvent or unable to meet its debts as they mature, to effect a plan of reorganization."

He further says, "No plan may be fully approved by the commission until it has been accepted in writing on behalf of the creditors holding ⅔ in amount of the claims of each class affected by the plan, and on behalf of the stockholders, ⅔ of the stock of each class";

And Judge Sutherland, further states, "Upon confirmation of the plan, it is to be binding not only upon the corporation and all stockholders and creditors generally, but upon all secured creditors of each class, of which ⅔ in amount shall have accepted the plan."

Judge Sutherland states that the Court has been called upon to decide its constitutionality and whether or not it affects the due process clause, etc. Then the Judge follows with a long history of the bankruptcy act and holds the law constitutional and uses the following language:

> "The confirmation or legalization of a scheme of arrangement under such circumstances, is no more than is done in bankruptcy when a composition agreement with the bankrupt debtor, if assented to by the required majority of the creditors is made binding on the non-assenting minority."

The judge closes his opinion with the following findings:

> "It follows from what has now been said that in its general scope and aim is within the powers conferred by the bankruptcy clause of the constitution and we so hold."

This opinion decides the constitutionality of the act in question in favor of the appellee herein.

Discussion of the Frazier-Lemke Act

It might and perhaps will, flash in the mind of the reader of this brief of the decision of Judge Brandeis, decided May 27, 1935, in regard to the Farmers Bankruptcy Act, which Judge Brandeis held to be unconstitutional, because it is in violation of the "due process" clause of the constitution, and if that should be in violation of the constitution, why not the Summers-Wilcox Act? We believe that this is a fair question and one worthy of a careful consideration, which we will try to give at this time.

It is to be noted in the Frazier-Lemke Act that Mr. Radford was the owner of a farm secured by a mortgage of $8,000.00 and later another thousand and that the farm at the time the loan was made was valued at $18,000.00; that the $9,000.00 was to run 34 years at 6% interest. Radford alleges an emergency. He had the land appraised on December 1, 1934 and the appraised value was $4,445.00. It is to be noted that Mr. Radford failed to obtain the acceptance of the requisite majority of numbers and amount in regard to the composition of creditors. It is to be noted that under the laws of the State of Kentucky that the bank had at least five rights in respect to the foreclosure of his mortgage. It is also to be noted that the Frazier-Lemke Act caused all the giving to come from Radford and not the loan company, and there is absolutely no equity in this act. The court properly held that the act was in violation of the constitution, because of the "due process" clause, but in so holding, held that all laws in regard to composition of creditors were binding and of full force and effect and showed the difference why they are binding. We will quote in a few minutes from the opinion, but we wish to state at this time that composition of creditors is unlike the Frazier-Lemke Act in at least the following particulars:

(1). The Sumners-Wilcox Act benefits the bondholders and is for their benefit as well as the District's benefit;

(2). The Sumner's-Wilcox Act cannot be invoked until at least 66⅔% of the bondholders approved the same;

(3). The Sumners-Wilcox Act is nothing more nor less than an agreement between the District on one side and the great majority of the bondholders on the other side for their mutual benefit and there are other differences, but these are sufficient to properly understand Judge Brandeis' quotation, which is as follows:

"Nor do the provisions of the bankruptcy act concerning compositions afford any analogy to the provisions of paragraph 7. So far as concern the debtor, the composition is an agreement with the creditors in lieu of a distribution of the property in bankruptcy—an agreement which 'originates in a voluntary offer by the bankrupt, and results, in the main, from voluntary acceptance by his creditors.' *Nassau Smelting & Refining Works, Ltd.* v. *Brightwood Bronze Foundry Co.*, 265 U. S. 269, 271, 44 S. Ct. 506, 507, 68 L. Ed. 1013; *Myers* v. *International Trust Co.*, 273 U. S. 380, 383, 47 S. Ct. 372, 71 L. Ed. 692. So far as concerns dissenting creditors the composition is a method of adjusting among creditors rights in property in which all are interested. In ordering the adjustment, the bankruptcy court exercises a power similar to that long exercised by courts of law, *Head* v. *Amoskeag Mfg. Co.*, 113 U. S. 9, 21, 5 S. Ct. 441, 28 L. Ed. 889; and of admiralty, *The Orleans* v. *Phœbus*, 11 Pet. 175, 183, 9 L. Ed. 677. It is the same power which a court of equity exercises when it compels dissenting creditors, in effect, to submit to a plan of reorganization approved by it as beneficial and assented to by the requisite majority of the creditors. *Shaw* v. *Railroad Co.*, 100 U. S. 605, 25 L. Ed. 757; *Kansas City Terminal Ry. Co.* v. *Central Union Trust Co.*, 271 U. S. 445, 46 S. Ct. 549, 70 L. Ed. 1028. Compare *National Surety Co.* v. *Coriell*, 289 U. S. 426, 53 S. Ct. 678, 77 L. Ed. 1300, 88 A. L. R. 1231; *First National Bank of Cincinnati* v. *Flershem*, 290 U. S. 504, 54 S. Ct. 298, 78 L. Ed. 465, 90 A. L. R. 391. In no case of composition is a secured claim affected except when the holder is a member of a class; and then only when the composition is desired by the requisite majority and is approved by the court. Never, so far as appears, has any composition affected a secured claim held by a single creditor. Compositions are comparable to the voluntary adjustment with the mortgagee provided for in paragraph 3 of the Frazier-Lemke amendment

(11 U. S. C. A., Sec. 203 (s) (3). They are not analogous to the socalled adjustment compelled by paragraph 7 (11 U. S. C. A., Sec. 203 (s) (7))."

From the quotation above set out, it would be idle and useless for me to draw a distinction, because Judge Brandeis has so beautifully and so clearly differentiated between the two acts and this case, in our opinion, supports the constitutionality of the Sumners-Wilcox Act upon all of its different angles.

There are a great many other decisions which support the constitutionality of this Act that would be appropriate to cite at this time, but since the citing of the last word of the Supreme Court does, in our opinion, decide the question.

In the case of the Imperial Irrigation District, in the District Court of the United States for the Southern District of California, McCormick, District Judge, probably has the latest decision on the Sumners-Wilcox Act. He discusses the constitutionality of the Act from several different angles and part of his opinion would be material to this brief, and, therefore, we will give part of his opinion, as follows:

"The constitutionality of Section 80, as added to the National Bankruptcy Act on May 24, 1934, is challenged by the objectors. I think the statute is valid as far as any of its terms concern this proceeding.

"The grant of federal power in bankruptcy matters is found in Article I, Section 8, of the Constitution, which provides:

" 'The Congress shall have power (4) to establish * * * uniform laws on the subject of bankruptcies throughout the United States;'

and in the co-efficient investiture of national authority in Clause 18 of the same Section and Article of the organic law of the nation, which reads:

" 'The Congress shall have power (18) to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'

"The verbiage of these basic delegations of power to the national legislature by the people of the United States is broad and inclusive. Everything and everyone that Congress may have the will to place within 'bankruptcies' and which are not manifestly without the 'subject of bankruptcies' as developed by changing economic condition and interpreted by the Supreme Court is valid legislation under these applicable clauses of the Constitution. The only limitations are those prescribed in the Constitution itself. (*Gibbon* v. *Ogden,* 9 Wheaton I.) I find nothing therein that renders Section 80 void as this Act applied to the Imperial Irrigation District or to this proceeding by it.

"The Supreme Court, without dissent, in recent cases involving Section 77 of the Bankruptcy Act, relating to the reorganization of railroads, sustained the constitutionality of legislation that is not unlike the statute under consideration in this proceeding. (*Continental Illinois Bank & Trust Company* v. *Chicago, Rock Island & Pacific Railway Co.,* decided April 1, 1935.) Both sections are emergency measures enacted as aids to national economic recovery. Both are remedial statutes and accordingly must be broadly interpreted to accomplish their purposes.

"Justice Sutherland, in the learned and exhaustive opinion of the Court, in the *Rock Island Railway* cases reviewed the history of bankruptcies both in England and in the United States. He pointed out the difference between 'bankruptcy' in the two countries, and also traced the valid evolution and judicially sanctioned extension of 'the subject of bankruptcies' with the meaning of the Constitution, and in that connection said:

" 'The fundamental and radically progressive nature of these extensions becomes apparent upon their mere

statement; but all have been judicially approved or accepted as falling within the power conferred by the bankruptcy clause of the Constitution. Taken altogether, they demonstrate in a very striking way the capacity of the bankruptcy clause of the Constitution. Taken altogether, they demonstrate in a very striking way the capacity of the bankruptcy clause to meet new conditions as they have been disclosed as a result of the tremendous growth of business and development of human activities from 1800 to the present day. And these acts, far-reaching though they may be, have not gone beyond the limit of congressional power; but rather have constituted extension into a field whose boundaries may not yet be fully revealed.'

"There is good reason to believe that the municipal debt readjustment provisions of the Act of May 24, 1934, are well within the area of the field of constitutional enactments adverted to be the learned justice..

"The evidence submitted at the hearing on January 31 clearly showed that the District is unable to meet its debts as they mature, that default has existed as to its outstanding bond and registered warrant obligations since July 1, 1932, and that this unmeetable financial situation has been mounting year by year since that time. The dislocation of market conditions for farm products, the excess of credit allowances on farm lands and the depreciation of acreage values, coupled with the most disastrous water shortage in the Imperial Valley, demonstrate beyond any doubt that the District is 'bankrupt' within the meaning of the Constitution.

"Under the *Rock Island Railway* case, *supra*, a quasi-public corporate body that was 'unable to meet its debts as they mature' was held to be properly subject to Congressional legislation within the bankruptcy clauses of the Constitution. The District involved in this proceeding is also a public body, and because it is also a governmental unit of the State of California it is not without the Constitutional pale of Congressional

authority on the 'subject of bankruptcies throughout the United States,' as far as any of its functions that are sought to be affected by Section 80 in this proceeding is concerned.

"In the early case of *Cohens* v. *Virginia,* 6 Wheaton 414, the Supreme Court, in discussing power that is granted by the language of the Constitution in national matters, speaking through Chief Justice Marshall, said:

" 'That the United States form, for many, and for most important purposes, a single nation, has not yet been denied. In war, we are one people. In making peace, we are one people. In all commercial regulations, we are one and the same people. In many other respects, the American people are one; and the government which is alone capable of controlling and managing their interests in all these respects, is the Government of the Union. It is their government, and in that character they have no other. America has chosen to be, in many respects, and to many purposes, a nation; and for all these purposes, her government is complete; to all these objects, it is competent. The people have declared, that in the exercise of all powers given for these objects it is supreme. It can, then, in effecting these objects, legitimately control all individuals or governments within the American territory. The constitution and laws of a state, so far as they are repugnant to the constitution and laws of the United States, are absolutely void. These states are constituent parts of the United States. They are members of one great empire—for some purposes sovereign, for some purposes subordinate.'

"There is nothing in the municipal debt readjustment act that usurps unsurrendered state sovereignty. The dual aspects of national and local governmental authority are expressly safeguarded and conserved. The private or proprietary element of an irrigation district is sufficiently distinct and definite to bring it within the purview of the bankruptcy power of Con-

gress. This is especially true where the state, as the creator and dominant power of the district's governmental functions, has given its consent. Compare *Merriwether* v. *Garrett*, 102 U. S. 482."

And then again, after he refers to the equity of the plan, he says:

"This showing, coupled with the large majority approval of all those creditors who are affected by the plan, comes close to demonstrating that the plan 'is fair, equitable, and for the best interests of the creditors, and does not discriminate unfairly in favor of any class of creditors.'

"The small minority of objecting creditors asserts that notwithstanding this apparently favorable showing, as far as affected creditors are concerned, it should not be approved, because, as previously stated, it impairs their lien rights under the California Irrigation District Act as that law stood at the times of the First and Second issues of bonds by the District. They claim that the First issue is superior, paramount and prior to all other issues, and that the Second has the same status except as to the First, and that therefore the Court should so classify such bonds as the objectors own, and relegate all other and consenting bonds on a parity but subordinate to them.

"Preliminarily it should be noted that Subsection (b) of Section 80 specifies that

"'A plan of readjustment within the meaning of this chapter (1) shall include provisions modyfying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; and (2) may contain such other provisions and agreements, not inconsistent with this chapter, as the parties may desire.'

"The matter just quoted might be interpreted to mean that valid and existing liens can be distributed

and impaired in taxing districts debts readjustments under the addition of May 24, 1934, to the National Bankruptcy Act. (Compare *Rock Island Ry. Reorganization* cases, *supra.*) Such construction is unnecessary in this proceeding, my conclusion in this matter as to the asserted lien of bonds of the First and Second issues being controlled by local law."

Again he says.

"When the method of payment of the bonds and their coupons is considered, it is made more clear that no preference or priority of any one bond over another is intended by the Act as a whole, notwithstanding the apparently contradictory terms of Section 40 as it stood when the first two issues became effective. This mode of payment is found in Section 52, which in the Act of 1897 provided:

"Upon presentation of the coupons to the treasurer he shall pay the same from the bond fund."

There is no distinction or latitude justified on the part of the treasurer. He is compelled to pay upon presentation. This negatives any preferential right as between bonds of different issues.

"The Supreme Court said in approving a Canadian method of relieving a financially embarrassed railway company of its unmeetable bond obligations against the protest of dissatisfied investors, in *Canada Southern R. Co.* v. *Gebhard,* 109 U. S. 527:

" 'The confirmation and legalization of 'a scheme of arrangement' under such circumstances is no more than is done in bankruptcy when a 'composition' agreement with the bankrupt debtor, if assented to by the required majority of creditors, is made binding on the non-assenting minority. In no just sense do such governmental regulations deprive a person of his property without due process of law. They simply require each individual to so conduct himself for the general good as not unnecessarily to injure another. Bankrupt laws

have been in force in England for more than three centuries, and they had their origin in the Roman law. The Constitution expressly empowers the Congress of the United States to establish such laws. Every member of a political community must necessarily part with some of the rights which, as an individual, not affected by his relation to others, he might have retained. Such concessions make up the consideration he gives for the obligation of the body politic to protect him in life, liberty and property. Bankrupt laws, whatever may be the form they assume, are of that character.'

And in that case the Court added:

"'It is in entire harmony with the spirit of bankrupt laws, the binding force of which, upon those who are subject to the jurisdiction, is recognized by all civilized nations. It is not in conflict with the Constitution of the United States, which, although prohibiting States from passing laws impairing the obligation of contracts, allows Congress 'to establish * * * uniform laws on the subject of bankruptcy throughout the United States.' Unless all parties in interest, wherever they reside, can be bound by the arrangement which is sought to be legalized the scheme may fail.'

I think the language just quoted is applicable and decisive here, especially as the same Court said in the *Rock Island Railway Reorganization cases, supra,* in discussing the authoritative force of such language in other cases,

"'It is unnecessary to consider the criticism sometimes made, that these excerpts are dicta merely, since we are of opinion that they are sound in principle.'

"In my opinion, the plan set forth by the petition and established by the evidence in this proceeding is fair, equitable, and for the best interests of the creditors, and does not discriminate unfairly in favor of any class of creditors, and complies with all requirements of Section 80 of the National Bankruptcy Act as added May 24, 1934.

"It is accordingly so ordered; and it is further ordered that upon proof of compliance with the last proviso of Subsection (k) of said Section 80, a decree finally confirming said plan will be entered herein.

Dated this 2nd day of May, 1935."

I wish to call attention to the fact that the opinion of Judge McCormick is dated May 2, 1935 and is one of the latest opinions holding the act in question constitutional. The opinion, taken as a whole, shows that the Judge gave a great deal of consideration to the opinion.

Then again we wish to call the court's attention to the opinion of St. Sure, in the matter of East Contra Costa Irrigation District, which opinion was referred to by Judge McCormick. This also considered the constitutionality of the Summers-Wilcox Bill and concludes that there is no doubt but what the same is constitutional. We wish to refer to this decision in its entirety.

POINT B.

The Act of May 24, 1934, being the act in question, does not violate the 10th Amendment of the Federal Constitution which provides powers not delegated to the United States by the Constitution are reserved to the States.

Thus, Mr. Justice Van Devanter, in *Indian Motocycle Co.* v. *United States*, 283 U. S. 570, said:

"Thus, as to persons or corporation which serve as agencies of government, National or State, and also have private property or engage on their own account in business for gain, it is well settled that the principle does not extend to their private property or private business, but only to their operations or acts as such agencies; and, in harmony with this view, it also has been held where a State departs from her usual governmental functions and 'engages in a business which is of

private nature', no immunity arises in respect of her own or her agents' operations in that business."

In *Willcutts* v. *Bunn*, 282 U. S. 216, Chief Justice Hughes said with reference to an attack made upon a section of the Federal Income Tax Law:

> "It must be remembered that we are dealing, not with any express constitutional restriction, but only with an asserted implication. The constitutional provisions authorizing the Congress to lay taxes (Article 1, Section 8; Sixteenth Amendment) are certainly broad enough to cover the tax in question, and before we can restrict their application upon the ground of a burden cast upon the State's borrowing power, there the tax is not laid upon the contracts made by the State in the exercise of that power, or upon the amounts payable thereunder, but is laid upon the result of distinct transaction by private owners, it must clearly appear that a substantial burden upon the borrowing power of the State would actually be imposed."

The decision of the Supreme Court of the United States in *Metcalf & Eddy* v. *Mitchell*, 269 U. S. 514, and *Wheeler Lumber, Bridge & Supply Co.* v. *United States*, 281 U. S. 572, and many others, illustrate the same principle.

From these decisions it clearly appears that the test to be applied in determining whether an Act of Congress violates the sovereignty of the States, is not whether the act has any application to the States or to their instrumentalities of government, but rather whether it impairs or impedes the governmental functions of the States and of their instrumentalities, and where the express power is conferred upon Congress to legislate upon a subject, the act is not unconstitutional, merely because it is applicable to a State or a municipality, or affects them in some indirect way, without in any manner impeding or impairing their powers of government.

Congressional legislation applicable to municipal corporations, or their State agencies, is no new development in our law. Under the Commerce Clause of the Constitution Congress has power to fix rates which may be charged by a railroad engaged in interstate commerce even though it be owned and operated by a State. *Cincinnati N. O. & Texas Pac. Railway* v. *Interstate Commerce Commission*, 162 U. S. 184; *Interstate Commerce Commission* v. *Detroit, Etc., Ry Co.*, 167 U. S. 633, and in *South Carolina* v. *United States*, 199 U. S. 437, the power of the Federal Government to levy an excise tax upon the State dispensaries of intoxicating liquors was sustained. These decisions clearly recognize the fact that the dual system of government, contemplated by the Constitution, does not prevent Congress from legislating upon subjects confided to it merely because the legislation is applicable to a State, without impairing its sovereignty.

The power of Congress to enact legislation upon the subject of bankruptcies is plenary. Certainly it is as broad in scope as the power to establish Federal courts. It has never been questioned that Congress has the power to set up a system of Federal courts in which municipal corporations of the State may sue and be sued. Indeed, if the grounds for Federal jurisdiction exist, a municipality may be sued in the Federal court without its consent, and, similarly, a municipality may, of its own volition, bring suit in a Federal court to enforce a cause of action against a citizen. It would hardly be questioned that a municipality would have the right to intervene in a bankruptcy proceeding pending in the Federal courts to file its claim against the bankrupt, or for other proper purposes. Certainly in one of these cases would any question of State sovereignty arise. It seems clear, therefore, that the bill is not unconstitutional merely because it permits a municipality of

a State to avail itself of the jurisdiction of the Federal courts.

Municipal corporations and taxing districts exist in two capacities—governmental and corporate. In early times, their corporate functions were negligible. Under modern conditions, they frequently overshadow their governmental functions. The Sumners Bill is applicable to municipalities and taxing districts in their corporate capacity. In their corporate capacity they are to be treated for all practical purposes as private corporations. In *Broughton* v. *Pensacola*, 93 U. S. 266, it was said:

> "Although a municipal corporation, so far as it is invested with subordinate legislative powers for local purposes is a mere instrumentality of the State for the convenient administration of government; yet, when authorized to take stock in a railroad company, and issue to obligations in payment of the stock, it is that extent to be deemed a private corporation, and its obligations are secured by all the guarantees which protect the engagements of private individuals."

This language was approved in *Mount Pleasant* v. *Beckwith*, 100 U. S. 514, and in *Mobile* v. *Watson*, 116 U. S. 289.

When a municipality or other taxing district issues bonds, it acts in a dual capacity. In the issuing of the bonds it is exercising the sovereign power to contract, and the Congress of the United States possesses no power to impede or impair the execution of that power. But, having issued the bonds and the soverign power having been exercised, its relation to its creditors upon the bonds is not that of a soverign, but of a corporation, and it is so treated by the courts in all controversies which arise between it and its creditors. Thus it may sue or be sued in either State or Federal courts, upon questions arising out of the contracts, and unless restricted by law, it possesses practically the same powers to liquidate or adjust them which are pos-

sessed by material persons. Thus in Dillon on Municipal Corporations, 5th Edition, Sec. 821, it is said:

> "Growing out of its authority to create debts and to incur liabilities, a municipal corporation has power to settle disputed claims against it, and an agreement to pay these is not void for want of consideration."

In Section 822, Judge Dillon remarks:

> "As a general proposition, municipal corporations have, unless specially restricted, the same powers to liquidate claims and indebtedness that natural persons have, and from that source proceeds power to adjust all disputed claims, and when the amount is ascertained to pay the same as other indebtedness. It would seem to follow therefrom that a municipal corporation, unless disabled by positive law, could submit to arbitration all unsettled claims with the same liability to perform the award as would rest upon a natural person, provided, of course, that such power be exercised by ordinance or resolution of the corporation authorities."

If municipalities possess the power to compromise or arbitrate claims against them, and if they possess the power to proceed in the Federal Courts to determine disputes upon contracts, which they have made with others, or if they may may be sued by others in the Federal courts upon such contracts, upon what theory is a bill unconstitutional which permits a municipality to institute a proceeding in the Federal court for the readjustment of its indebtedness? In effect it might be said that the proceeding provided by the Sumners Bill is merely an arbitration between the municipality and its creditors. The award, it is true, is binding upon parties who have not appeared in the proceeding, but have merely been served with process by publication, but certainly that fact is no impairment of the powers of the municipality or taxing district. That is the very reason the municipality or taxing district instituted the

proceeding. If it can be complained of at all, it can only be complained of by those parties, who must show that their constitutional rights have been violated.

As a matter of fact I am of the opinion that even where the act made applicable to the State, it would not be unconstitutional. A proceeding cannot be instituted under the Act except by the public agency. Moreover, it must come into the Federal Court voluntarily. Even the states may submit to the jurisdiction of the Federal Courts. When they do so, they waive their sovereignty and waive the immunity guaranteed to them by the Eleventh Amendment to the Federal Constitution; and they are then bound by the decision of the same extent as any other litigant. *Clark* v. *Bernard*, 103 U. S. 436; *Gunter* v. *Atlantic Coast Line*, 200 U. S. 273.

In *Mott on Due Process of Law*, it is said at page 302:

> "114. The earliest definition of the police power practically identified it with the powers of sovereignty. In 1851 Chief Justice Shaw gave the often quoted definition of it as 'the power vested in the legislature by the constitution to make, ordain and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good welfare of the Commonwealth, and of the subjects of the same.' Both Cooley and Freund have adopted similarly broad definitions. The tendency of the courts, now however, is to narrow the concept to 'the power inherent in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of society' ".

The Municipal Bankruptcy Act expressly provides in Section 80 thereof "nothing contained in this chapter shall be construed to limit or impair the power of any State to control by legislation or otherwise any political subdivision

thereof in the exercise of its political or governmental powers."

How or in what manner the act interferes with the State's right to legislate "for the order, safety, and morals" of the State's citizens is beyond our understanding.

POINT C.

The Act of May 24, 1934, being the act in question, does not impair the rights of the State in any way.

The arguments given under Point B is referred to in full.

POINT D.

The Act of May 24, 1934, being the act in question, does not violate the 5th Amendment to the Federal Constitution in that it deprives the bondholders of their property without due process of law, for the reason that due process of law is given and said act does not apply unless 66⅔ per cent of the bondholders agree thereto and it is conceded then to be for their best interest.

We do not believe it is necessary to present much argument to support this point, because we believe it has definitely been decided so many times and the constitutionality of which has always been upheld. The Railroad case cited under Point A is definite; in that case the Railroad Company was required to secure an approval of 66⅔% of its bondholders. The same is a requisite of the Sumners-Wilcox bill.

We might also call attention to the fact that this is true in all cases of composition of creditors, which has likewise been held to be constitutional even though the amount required is only 50% instead of 66⅔%, as required under this Act.

In *Canada Southern Railroad Co.* v. *Gebhard,* 109 U. S. 527, Chief Justice Waite declared the Canadian arrangement, under consideration, to be legal and in opinion he said:

> "Hence it seems to be eminently proper that where the legislative power exists some statutory provision should be made for binding the minority in a reasonable way by the will of the majority; and unless, as in the case in the States of the United States, the passage of laws impairing the obligation of contracts is forbidden, we see no good reason why such provision may not be made in respect to existing as well as prospective obligations. The nature of legislative supervision for the good of all, unless restrained by some constitutional prohibition, seems almost necessarily to form one of their ingredients, and when insolvency is threatened, and the interests of the public, as well as creditors, are imperiled by the financial embarrassments of the corporation, a reasonable 'scheme of arrangement' may, in our opinion, as well be legalized as an ordinary 'composition in bankruptcy.' In fact such 'arrangement acts' are a species of bankrupt acts. * * * It is in entire harmony with the spirit of bankrupt laws, the binding force of which, upon those who are subject to the jurisdiction is recognized by all civilized nations. It is not in conflict with the Constitution of the United States, which, although prohibiting States from passing laws impairing the obligation of contracts, allows Congress to establish uniform laws on the subject of bankruptcy throughout the United States."

POINT E.

The Reconstruction Finance Corporation has ample authority to come to the aid of the Irrigation Districts and advance money to said districts to enable the districts to carry on and furnish water to the farmers to make crops where they could not otherwise do so.

Public Act No. 2 of the 72nd Congress, approved January 22, 1932, as amended.

General Arguments.

It is to be noted that the Legislature of the State of Texas passed, by a unanimous vote, on the 27th day of April, 1935, an Act authorizing municipalities; political subdivisions and tax districts to take advantage of the Federal Bankruptcy Act and declared an emergency. This Act, without question, waives the issue of States' rights. This law is set out in full on page 61 of the brief of appellants in the Circuit Court of Appeals for the Fifth Circuit.

The Supreme Court of the United States has held many times that the approval by a majority of the creditors is *prima facie* evidence that the offer made will be for their best interest, and therefore it would not be taking property without due process of law. These authorities are set out in full on pages 79 and 80 of appellants' brief filed in the Circuit Court of Appeals.

> "*In re Kinnane Co.* (D. C. Ohio, 1915) 221 F. 762; *In re Goldstein* (D. C. Conn. 1914), 213 F. 115; *In re Barde* (D. C. Or. 1913) 207 F. 654; *In re Hoxie* (D. C. Me. 1910), 180 F. 508, 25 Am. Bankr. Rep. 32; *In re Waynesboro Drug Co.* (D. C. Ga. 1907), 157 F. 101, 19 Am. Bankr. Rep. 487; *In re Joseph* (C. C. N. Y. 1885), 24 F. 137; *Bolles* v. *Kelley* (Mass. 1915), 222 F. 63, 137 C. C. A. 601; *In re Rivkin* (D. C. Conn. 1914), 216 F.

218; *In re H. J. Arrington Co.* (D. C. Va. 1902), 113 F. 498, 8 Am. Bankr. Rep. 64; *City Nat. Bank* v. *Doolittle* (Tex. 1901), 107 F. 236, 46 C. C. A. 258, 5 Am. Bankr. Rep. 735; *In re Spiller* (D. C. Mass. 1916), 230 F. 490; *In re Griffith Stillings Press* (D. C. Mass. 1917), 244 F. 315."

To illustrate this question, we would like to refer the Court to the statement of C. M. Shanks, President of the Prudential Life Insurance Company of New York. Mr. Shanks' company holds $150,000,000 of municipal bonds of which several million were in default. Mr. Shanks was in favor of the bill, and went before Congress and made the following statement: "From the point of view of the investor we fear what is going to happen and we are very much in favor of the passage of this bill."

The opinion of the Circuit Court of Appeals does not in any way violate or contradict the opinion of the Supreme Court in the Frazier-Lemke Act which was decided on May 22, 1935, and we wish to give the following quotation from said opinion:

> "Nor do the provisions of the bankruptcy act concerning compositions afford any analogy to the provisions of paragraph 7. So far as concerns the debtor, the composition is an agreement with the creditors in lieu of a distribution of the property in bankruptcy—an agreement which 'originates in a voluntary offer by the bankrupt, and results, in the main, from voluntary acceptance by his creditors.' *Nassau Smelting & Refining Works, Ltd.*, v. *Brightwood Bronze Foundry Co.*, 265 U. S. 269, 271, 44 S. Ct. 506, 507, 68 L. Ed. 1013; *Myers* v. *International Trust Co.*, 273 U. S. 380, 383, 47 S. Ct. 372, 71 L. Ed. 692. So far as concerns dissenting creditors, the composition is a method of adjusting among creditors rights in property in which all are interested. In ordering the adjustment, the bankruptcy court exercises a power similar to that

long exercised by courts of law, *Head* v. *Amoskeag Mfg. Co.*, 113 U. S. 9, 21, 5 S. Ct. 441, 28 L. Ed. 889; and of admiralty, *The Orleans* v. *Phoebus*, 11 Pet. 175, 183, 9 L. Ed. 677. It is the same power which a court of equity exercises when it compels dissenting creditors, in effect, to submit to a plan of reorganization approved by it as beneficial and assented to by the requisite majority of the creditors. *Shaw* v. *Railroad Co.*, 100 U. S. 605, 25 L. Ed. 757; *Kansas City Terminal Ry. Co.* v. *Central Union Trust Co.*, 271 U. S. 445, 46 S. Ct. 549, 70 L. Ed. 1028. Compare *National Surety Co.* v. *Coriell*, 289 U. S. 426, 53 S. Ct. 678, 77 L. Ed. 1300, 88 A. L. R. 1231; *First National Bank of Cincinnati* v. *Flershem*, 290 U. S. 504, 54 S. Ct. 298, 78 L. Ed. 465, 90 A. L. R. 391. In no case of composition is a secured claim affected except when the holder is a member of a class; and then only when the composition is desired by the requisite majority and is approved by the court. Never, so far as appears, has any composition affected a secured claim held by a single creditor. Compositions are comparable to the voluntary adjustment with the mortgagee provided for in paragraph 3 of the Frazier-Lemke amendment (11 U. S. C. A. Sec. 203 (s) (3). They are not analogous to the so-called adjustment compelled by paragraph 7 (11 U. S. C. A. Sec. 203 (s) (7)."

It is to be noted that the opinion of the Circuit Court of Appeals for the Fifth Circuit decides every issue as the same should be decided under the authorities heretofore cited. Judge Foster states that there is nothing in the act which could be construed to limit the power of the State to control by legislation or otherwise any political subdivision thereof, and the judge also states this law is similar to the Railroad Act as decided by the Supreme Court.

In addition to the opinion of the Circuit Court of Appeals which is the only circuit court that has passed upon this question, there have been twenty United States Federal

judges who have held this act constitutional and only one holding the act unconstitutional, and that is Judge Kennerley of Houston whose opinion was reversed by the Fifth Circuit.

Prayer for Relief.

Since the opinion of the Circuit Court of Appeals clearly states the law as it is, we respectfully ask this Honorable Court to refuse the writ of certiorari in all things.

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Supreme Court of the United States

OCTOBER TERM, 1935

No. 859

C. L. ASHTON, *et al.*,

Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. ONE,

Respondent.

BRIEF OF RESPONDENT

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Supreme Court of the United States

OCTOBER TERM, 1935

No. 859.

C. L. ASHTON, *et al.*,

Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. ONE,

Respondent.

BRIEF OF RESPONDENT.

This appeal presents to this Honorable Court for decision, the question of the constitutionality of Section 80 of the Bankruptcy Act, generally known as the Municipal Bankruptcy Act. The act has been held constitutional by a great many District Judges. The only adverse decision regarding its constitutionality of which we are aware, was that rendered in this case in the District Court for the Southern District of Texas, which decision was reversed by the Circuit Court of Appeals of the Fifth Circuit. From this last mentioned decision, the petitioners appeal to this Honorable Court.

Argument.

An analysis of the brief of the petitioners would indicate that the following points regarding the constitutionality of the statute are presented for decision by this Court:

1. Is the act a bankruptcy act within the meaning of Subdivision 4, Sec. 8, Art. I of the Constitution of the United States?

2. Is the act a uniform law upon the subject of bankruptcies throughout the United States?

3. Does the act violate the Fifth Amendment to the Federal Constitution?

4. Does the act invade the sovereignty of the States in violation of the Tenth Amendment to the Constitution of the United States?

5. Does the act violate Subdivision 1 of Section 10 of Article I of the Constitution of the United States, and Section 16 of Article I of the Constitution of the State of Texas by impairing the obligation of contracts?

We will consider these points in that order.

The Act is a Bankruptcy Act.

The provisions of the act before the Court are so similar to the provisions of Section 77 of the Bankruptcy Act that we consider the decision of this Court in *Continental Bank* v. *Rock Island Railway,* 294 U. S. 648, disposes of any question that the act is a bankruptcy act, within the meaning of Subdivision 4, Section 8, Article I of the Constitution of the United States. The statute before the Court in this case, like that considered in *Continental Bank* v. *Rock Island Railway, supra,* is a composition act. To quote the language of Mr. Justice Sutherland in that decision:

> "Both contemplate an adjustment of a failing debtor's obligations; and although actual bankruptcy may not supervene in either, they are none the less laws on the subject of bankruptcies."

In view of the fact that the decision in *Continental Bank* v. *Rock Island Railway, supra,* was rendered so recently, and the statute then before the Court is so familiar to the members of this Honorable Court, we will not impose upon the time of the Court to compare the provisions of Section 77 of the Bankruptcy Act with the provisions of Section 80 of the same statute, which is now before the Court in this case. It is sufficient to say that they are substantially alike. They both provide for a proceeding in the United States District Court for the composition of the debts of an insolvent debtor pursuant to an agreement reached with the holders of a majority in amount of the outstanding obligations of the debtor.

The statute before the Court in this case, like Section 77 of the Bankruptcy Act, is distinguishable from the act before this Court in *Louisville Joint Stock Land Bank* v. *Radford,* 295 U. S. 555, in that it is a composition act. This distinction was pointed out by Mr. Justice Brandeis

in delivering the opinion of the Court in that case. He said:

> "Nor do the provisions of the bankruptcy acts concerning compositions afford any analogy to the provisions of Paragraph 7. So far as concerns the debtor, the composition is an agreement with the creditors in lieu of a distribution of the property in bankruptcy—an agreement which 'originates in a voluntary offer by the bankrupt, and results in the main, from voluntary acceptance by his creditors.' * * * So far as concerns dissenting creditors, the composition is a method of adjusting among creditors rights in property in which all are interested. In ordering the adjustment, the bankruptcy court exercises a power similar to that long exercised by courts of law, * * * and of admiralty. * * * It is the same power, which a court of equity exercises when it compels dissenting creditors, in effect, to submit to a plan of reorganization approved by it as beneficial and assented to by the requisite majority of the creditors."

We respectfully submit that in view of these decisions there can be no doubt that the act before the Court in this case is a bankruptcy act.

The Act is a Uniform Law Upon the Subject of Bankruptcies Throughout the United States.

The petitioners contend that there is a lack of uniformity in the application of the Municipal Bankruptcy Act. They base their contention upon the provisions of Subdivision (k) of Section 80 of the statute. They assert that the provisions of this subdivision indicate that the act does not apply to political subdivisions of States which have established fiscal agencies exercising authority over such subdivisions, unless such fiscal agencies consent to the filing of the petition, and that the act does not purport to apply to political subdivisions of States which pass

legislation requiring the approval of an agency of the State of the filing of the petition, unless such approval is obtained. We wish to point out to the Court that there is nothing in the provisions of Subdivision K of the Act providing that the act is inapplicable in any State. That subdivision merely recognizes the fact that the taxing districts, to which the act is applicable, are not free agents, and provides that in those States in which there are State agencies authorized to exercise supervision or control over the fiscal affairs of the taxing districts, the petition may not be received by the District Court, unless accompanied by the written approval of such State agency. In short, the act creates a special class of petitioners and modifies slightly the procedure, incident to the filing of a petition under the act, in the case of members of that class. It is intended merely to prevent the filing of a petition in the District Court of the United States by a petitioner which has not complied with all the formalities, required by the laws of the State in which it is located, to authorize it to do so.

This Court has repeatedly held that the uniformity required of a bankruptcy act, to conform to the Constitution of the United States, is geographic and not personal in the sense of being alike applicable to all members of the community. *Hanover National Bank* v. *Moyses*, 186 U. S. 181; *Leidigh Carriage Co.* v. *Stengel*, 95 Fed. 637.

The fact, therefore, that the Municipal Bankruptcy Act requires a taxing district to comply with the laws of the State in which it is located, requiring the approval of the petition by a State agency, does not destroy the geographic uniformity of the act but merely creates a class of petitioners, required to comply with certain formalities prior to the filing of the petition with the District Court, which are not required of other petitioners, which are not members of the class.

The power of Congress to classify persons who may take advantage of bankruptcy acts is so well settled that

it will hardly admit of controversy. The various changes in the classification of persons, entitled to take advantage of bankruptcy laws of the United States, are set forth in great detail by Mr. Justice Sutherland, in *Continental Bank* v. *Rock Island Railway, supra.* We respectfully submit, therefore, that the classification of taxing districts set forth in Subdivision K of the Municipal Bankruptcy Act does not violate the geographic uniformity required of a bankruptcy law by Subdivision 4, Section 8, Article I of the Constitution of the United States.

The Act Does Not Violate the Fifth Amendment to the Constitution of the United States.

The petitioners contend that the Municipal Bankruptcy Act violates the Fifth Amendment to the Federal Constitution. They assert that the bankruptcy power is subject to the provisions of the Fifth Amendment, prohibiting the deprivation of persons of their property without due process of law. No doubt that is so, but this Court said in *Continental Bank* v. *Rock Island Railway, supra:*

> "The Constitution, as it many times has been pointed out, does not in terms prohibit Congress from impairing the obligation of contracts as it does the states. * * * Speaking generally, it may be said that Congress, while without power to impair the obligation of contracts by laws acting directly and independently to that end, undeniably, has authority to pass legislation pertinent to any of the powers conferred by the Constitution, however it may operate collaterally or incidentally to impair or destroy the obligation of private contracts. * * * And under the express power to pass uniform laws on the subject of bankruptcies, the legislation is valid though drawn with the direct aim and effect of relieving insolvent persons in whole or in part from the payment of their debts."

In *Louisville Joint Stock Land Bank* v. *Radford, supra,* cited by petitioners in support of their contention, Mr. Justice Brandeis, in rendering the opinion of the Court, recognized the principle embodied in the above quotation, when he said:

> "But the effect of the act here complained of is not the discharge of Radford's personal obligation. It is the taking of substantive rights in specific property acquired by the Bank prior to the Act."

The act before the Court in that case was not a composition act. The consent of the creditor or creditors to a plan of composition was not required. The adjustment of the indebtedness of the bankrupt was intended to be accomplished without the consent of creditors. The element of composition being lacking, it may well be doubted whether the Frazier-Lemke Act, which this Court held unconstitutional in that case, is a bankruptcy act at all.

The Municipal Bankruptcy Act is so dissimilar from the Frazier-Lemke Act and so similar to Section 77 of the Bankruptcy Act that the decision in *Louisville Joint Stock Land Bank* v. *Radford* is not applicable, and the case which is in point is *Continental Bank* v. *Rock Island Railway, supra.*

The Act Does Not Invade the Sovereignty of the States in Violation of the Tenth Amendment to the Constitution of the United States.

The reasons for the enactment of the Municipal Bankruptcy Act were identical with those which motivated Congress in enacting Section 77 of the Bankruptcy Act, applicable to railroad corporations. The public corporations, being unable to meet their obligations at maturity, found that their outstanding bonds, notes and other evidences of indebtedness were held by large numbers of persons. Usually they found it possible to enter into agreements

with the holders of the great majority of these obligations for an extension of the indebtedness, or for an adjustment of the principal or interest of the obligations, or both. Almost invariably, however, they were unable to reach similar agreements with the holders of comparatively small amounts of these obligations, and these adjustments, for that reason, were frequently frustrated. There was no law under which the minority could be bound by an agreement entered into by the holders of the great majority in amount of the outstanding obligations. The result was that Congress was petitioned, not only by the municipalities but by creditor interests, to enact legislation under the bankruptcy powers vested in it by the Constitution of the United States, to substitute the democratic principle of majority rule for the virtual anarchy which then existed with reference to the adjustment of the debts of insolvent municipal corporations and taxing districts.

The Municipal Bankruptcy Act was enacted by Congress to meet this situation. There was no intention upon the part of Congress to extend the powers of the Federal courts over the taxing districts. No extension of such powers was necessary to meet the situation. The powers of the Federal courts with reference to the enforcement of the defaulted municipal obligations was deemed to be adequate. Let us take a moment to consider what these powers were and still are.

The holder of a bond issued by a municipal corporation or taxing district of any of the States, if the requisite ground for Federal jurisdiction existed, was entitled to bring a suit in the United States District Court against the municipality or taxing district and obtain a judgment for the amount due, or principal or interest or both. The Court was empowered to require the municipality or taxing district to answer the complaint of the bondholder, and the officials of the municipality or taxing district could be subpœnaed to testify in the case and required to

bring with them the minute books and other records of the municipality for examination by the plaintiff.

Having rendered a judgment in favor of the plaintiff upon the defaulted securities, the Court was empowered, upon application of the judgment creditor, to issue a writ of mandamus directed to the municipality or taxing district and its governing body and other officers, requiring them to levy taxes, in the manner provided by the laws under which the obligations were issued, for the payment of the judgment under penalty of being committed for contempt of court.

For generations Federal courts, including this Honorable Court, have entertained suits of this character for the enforcement of the defaulted obligations of cities, towns, counties, townships, school districts and other districts of every conceivable variety. It has never been considered that these powers were invasions of the sovereignty of the respective States. In *Lincoln County* v. *Luning*, 133 U. S. 5, it was contended that the Eleventh Amendment prohibited suits against counties in a Federal court. That contention was expressly denied by this Court, and it has never been questioned, since that time, that the Eleventh Amendment prohibits only suits against the State itself.

The extension of the jurisdiction of the Federal courts by the Municipal Bankruptcy Act, therefore, *was an extension of jurisdiction over creditors.* The Court was given no additional jurisdiction over the municipality or taxing district. It was merely authorized to enter a decree, the effect of which was to require minority creditors to accept a composition, agreed upon by the holders of the requisite majority in amount of the obligations affected by the plan. So far as secured claims are concerned they could be effected by the decree only when the holder of the secured claim was a member of a class, and then only when the composition was desired by the requisite majority of the class and approved by the Court. No power vested in the

Federal Court by the Municipal Bankruptcy Act, which might be exercised against the municipality or taxing district, can be pointed to which the Court did not possess prior to the enactment of that statute.

The act merely gave municipalities and taxing districts the right to institute a proceeding in the Federal courts, which they did not theretofore possess. No bankruptcy proceeding can be instituted under the act against any municipality or taxing district by creditors. The proceeding must be instituted by the municipality itself. We fail to see how the extension of a right, which may or may not be availed of at the option of the municipality or taxing district, can be construed as an invasion of the sovereignty of the States.

We respectfully submit that the cases cited by the petitioners in their brief are not in point. We recognize that the Courts of Texas and the Federal courts have sustained the right of a bondholder to compel the collection of taxes by the municipality issuing the bonds in order to provide for their payment, and that the bondholders have a right to rely upon the performance of such obligations, but these are rights of private individuals, not the prerogatives of the sovereign. We also admit that the Federal courts cannot interfere with the control of the States over the fiscal affairs of their municipalities, with this qualification,—that they may require such municipalities to perform their contracts. No attempt is made by the Municipal Bankruptcy Act, however, to control the fiscal affairs of the municipalities or taxing districts of the States. The act does no more than require a minority of creditors to accept a composition, tendered by the municipality, which has received the approval of the requisite majority of the creditors.

The decisions cited by the petitioners, such as *Pollock* v. *Farmers Loan & Trust Co.*, 157 U. S. 429; 158 U. S. 601; *Willcutts, Collector,* v. *Bunn,* 282 U. S. 216, etc., involving the right of the United States to levy taxes upon

municipal bonds or the income derived therefrom, obviously are not in point. The *issuance* of municipal bonds is an exercise of one of the sovereign powers of the States, to-wit, the contracting power. This Court has repeatedly held that a tax upon a municipal bond or the income derived therefrom falls upon the borrower, and is in reality a tax upon the exercise of the borrowing power of the State. We are heartily in accord with these decisions, but they all relate to the exercise of powers directed against municipalities or the States in which they are located. There are no comparable provisions of the Municipal Bankruptcy Act. In short, the Municipal Bankruptcy Act deals solely with the adjustment of the indebtedness of insolvent corporations. Taxing districts, to which the act is applicable, notwithstanding their public character, are corporations, with entities distinct from that of the State. In their relations with creditors they are treated by the Courts for all practical purposes as corporations. In *Broughton* v. *Pensacola*, 93 U. S. 266, this Court said:

> "Although a municipal corporation, so far as it is invested with subordinate legislative powers for local purposes, is a mere instrumentality of the State for the convenient administration of Government, yet, when authorized to take stock in a railroad company, and issue its obligations in payment of the stock, it is to that extent to be deemed a private corporation, and its obligations are secured by all the guaranties which protect the engagements of private individuals."

This language was approved in *Mount Pleasant* v. *Beckwith*, 100 U. S. 514, and in *Mobile* v. *Watson*, 116 U. S. 289. It may be contended, however, that many of these taxing districts are not corporations and that there is no statute either declaring them to be corporations or conferring upon them the power to sue or be sued. No particular form of words, however, is required to create a public corporation. Intent to create a corporation, or a

quasi corporation, may be implied from the powers which are conferred upon a group of individuals.

Cooley on Constitutional Limitations, 8th Edition, Vol. 1, p. 411;
Dillon on Municipal Corporations, 5th Edition, Vol. 1, p. 120;
Mahoney v. *Bank of State*, 4 Ark. 620;
Rosencranz v. *Evansville*, 43 N. E. 593;
Dean v. *Davis*, 51 Cal. 406;
Jordan v. *Case County*, 3 Dillon 185;
Blair v. *West Point Precinct*, 5 Fed. 265;
King v. *Harbor Board*, 57 Ala. 135;
School District v. *Insurance Co.*, 103 U. S. 707;
Levy Court v. *Coroner*, 2 Wall. 501.

When the Legislature of a State creates a political subdivision and vests in the governing body of that subdivision the power to issue bonds in its own name or on its behalf, by so doing the State vests in that political subdivision the attributes of a corporation, with power to sue and be sued with respect to the contracts which it makes on the bonds and in relation to them.

The Municipal Bankruptcy Act merely undertakes to permit these corporations to enter into composition agreements with the majority of their creditors and to file a petition in the United States District Court praying for a decree making that composition binding upon all creditors. It is difficult to see in what respect such a statute invades the sovereign powers of the States.

The Municipal Bankruptcy Act Does Not Violate Section 10 of Article I of the Constitution of the United States, Nor Section 16 of Article I of the Constitution of Texas.

In support of their contention that the Municipal Bankruptcy Act violates Section 10 of Article I of the Constitution of the United States and Section 16 of Article I of the Constitution of Texas, petitioners cite an opinion, prepared by Special Assistant Attorney General Weston, which was transmitted by the Attorney General of the United States to the House Judiciary Committee when the Municipal Bankruptcy Act was under consideration there. In that opinion an attempt is made to distinguish between true municipal corporations and "political subdivisions which are merely departments or branches of the State Government". We submit that there is no basis for any distinction between true municipal corporations, such as cities and towns, and any other political subdivision of a State, which is a corporation distinct from the State, having the power to issue bonds in its own name or on its behalf, which are not the obligations of the State itself. Such subdivisions, like Cameron County Water Improvement District No. 1, are not merely departments or branches of the State Government. They have an entity entirely distinct from that of the State which created them. Were this not so then no suits could be brought against them without the consent of the State. Such suits would be prohibited by the Eleventh Amendment to the Constitution of the United States, but as above pointed out, this Court has held in *Lincoln County* v. *Luning, supra,* that the Eleventh Amendment does not prohibit such a suit against a county, and literally hundreds of suits brought upon bonds issued by counties, school districts, drainage districts, irrigation districts and

similar political subdivisions of the States, have been reviewed by this Court during the past one hundred years. The decisions of this Court in some of these suits are among the most important rulings in the municipal law of the United States. We need but refer to such cases as,

Bernards Township v. *Morrison*, 133 U. S. 523;
Ackley School District v. *Hall*, 113 U. S. 135;
Fallbrook Irrigation Dist. v. *Bradley*, 164 U. S. 112;
Houck v. *Little River Drainage Dist.*, 239 U. S. 254;
Heine v. *Levee Commissioners*, 19 Wall. 655;
Norton v. *Taxing District of Brownsville*, 129 U. S. 479;
Orr v. *Allen*, 248 U. S. 35.

It is rather late to question the jurisdiction of the Federal courts over these political subdivisions and taxing districts so far as concerns the contractual obligations they have incurred to private citizens.

As we understand the reasoning of the petitioners upon this point, they contend that the Municipal Bankruptcy Act is inoperative without concurrent legislation upon the part of the States expressly authorizing their municipalities and taxing districts to take advantage of the Municipal Bankruptcy Act, and that such State legislation impairs the obligation of contracts in violation of Subdivision 1 of Section 10 of Article I of the Constitution of the United States, and the similar prohibition contained in Section 16 of Article I of the Constitution of Texas. This argument proceeds upon the *assumption* that such State legislation is necessary. No reason is assigned for this assumption, and we do not admit its validity.

As we have previously pointed out, when a State authorizes one of its political subdivisions to issue bonds in its own name, it vests in that district the attributes of a corporation, with power to sue and to be sued. A political

subdivision authorized to issue bonds would certainly have the power to bring suit against a purchaser of the bonds for damages for failure to perform his contract or for the cancellation of the bonds, if they were illegally issued. It would even possess the right to file a claim in bankruptcy against a bankrupt if such a claim should arise out of the transaction. We submit that such a corporation possesses the right to resort to any judicial proceeding permitted by the laws of the States or of the United States with reference to any claim or right asserted to have arisen out of the transaction, and that this right is not limited to those proceedings or procedures which may have been authorized at the time it issued the bonds, but extends to any judicial proceeding permitted by the laws of the United States or of the respective States at the time the action is taken.

We think it would hardly be questioned that in any dispute arising between a municipality and its creditors it would have the right to participate in a proceeding for a declaratory judgment in the Federal courts, notwithstanding the fact that until quite recently no such proceeding was authorized by the Federal statutes, and even though no statute existed expressly authorizing the municipality to file a proceeding for a declaratory judgment. This district is authorized, by express statutes of the State of Texas, to sue or be sued, and we respectfully submit that such power vests in the district the right to institute any sort of judicial proceeding which might be available to it at any time under the laws of any State or of the United States for the determination of any controversy arising out of its contracts, and that such power expressly authorizes it to file a petition in bankruptcy when such a bankruptcy proceeding is authorized by the laws of the United States.

The argument that concurrent legislation on the part of the States is necessary seems to proceed upon the notion that the Municipal Bankruptcy Act is an invasion of the

sovereignty of the States, and, therefore, the several States must affirmatively give their consent to its provisions before the act can be applicable to their municipalities. No other reason for the necessity for such concurrent legislation is given or even hinted at in the petitioners' brief.

We believe, however, that we have demonstrated that the Municipal Bankruptcy Law does not involve any invasion of the sovereignties of the States, and, that being so, we can conceive of no more reason for the enactment of legislation by the States, expressly authorizing a municipal corporation to file a petition under the Municipal Bankruptcy Law, than for similar legislation authorizing a railroad corporation to file a petition in bankruptcy under the provisions of Section 77 of the Bankruptcy Act.

But even assuming such concurrent legislation were necessary, such acts of the States consenting to the filing of bankruptcy petitions by municipalities and taxing districts would not constitute acts in violation of the obligation of contract. The right to file a petition in bankruptcy can only be conferred by Congress. The decree of a United States District Court confirming a composition in bankruptcy can only be rendered under the authority of an Act of Congress. If there is any impairment of the obligation of contracts, therefore, the act which impairs the obligation is the act of Congress, and there is no prohibition against the enactment by Congress of a bankruptcy act, which has the effect of impairing the contractual obligations.

The impairment of the contract does not flow from the act of the State legislation. Such a statute would merely authorize the municipalities to present a petition to the United States District Court. The consequences which would follow from the filing of that petition would not derive from the act of the State Legislature but from a decree of the District Court, if any were rendered in

the proceeding, which would depend for its validity not upon the State legislation but upon the act of Congress.

The Circuit Court of Appeals held that concurrent legislation by the State was not necessary. We believe that decision to be correct, but we submit that even if such concurrent legislation on the part of the State were necessary, such legislation would not impair the obligation of contracts in violation of Section 10 of Article I of the Constitution of the United States, or Section 16 of Article I of the Constitution of Texas.

The Validity of the Contract Made Between the District and the Reconstruction Finance Corporation Cannot be Attacked in This Appeal.

The petitioners attack the validity of the loan contract between the District and the Reconstruction Finance Corporation. The ground upon which they base their attack is that under the provisions of subdivision (e) of Section 80 of the Bankruptcy Law, the District Judge shall confirm the plan only if satisfied that

> "the taxing district is authorized by law, upon confirmation of the plan, to take all action necessary to carry out the plan."

Petitioners contend that the District is not authorized by law to carry out all of the provisions of the contract entered into with the Reconstruction Finance Corporation.

No such objection, however, was made in the District Court, and we submit that it cannot now be raised in this Court. The District Court dismissed the petition for want of jurisdiction. The question to be decided by this Honorable Court is whether the District Judge ruled correctly in this respect. The merits of the refunding plan, or defects in it, were not involved in the order of dismissal. They were matters which might be raised upon

the hearing provided for by subdivision (c) of Section 80. If at the hearing, petitioners were able to demonstrate that the plan was defective, unfair or contained illegal provisions, all of these objections might possibly be disposed of by appropriate amendments or modifications of the plan.

Inasmuch as the proceeding never reached the stage of a hearing upon the merits of the plan, we respectfully submit that the legality of the contract made between the District and the Reconstruction Finance Corporation, the power of the District to carry out the contract, or the constitutional right of the Corporation to make the loan, are not properly before this Honorable Court.

Conclusion.

In conclusion, we submit that the Municipal Bankruptcy Act is valid legislation, and that the decision of the United States Circuit Court of Appeals should be affirmed.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1952.

C. L. Albrecht et al.,

Petitioners,

vs.

Cameron County Water Improvement District No. One,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF OF JAMES N. GILLETT, W. CORBIN JOHNSON, HERMAN WEBER, ROSS T. HICKOX, HENRY W. COIL AND CHAS. I. CHILDERS, AS AMICI CURIAE IN SUPPORT THEREOF

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1935.

No. 859

C. L. Ashton et al.,

Petitioners,

vs.

Cameron County Water Improvement District No. One,

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

May It Please the Court:

The undersigned, James N. Gillett and W. Coburn Cook, as counsel for George F. Covell and others; A. Heber Winder, as counsel for James H. Jordan and others; Henry W. Coil and Ross T. Hickcox, as counsel for The Southern Sierras Power Company and others; Chas. L. Childers, as counsel for West Coast Life Insur-

ance Company; respectfully move this Honorable Court for leave to file the accompanying brief in this case as *amici curiae.*

JAMES N. GILLETT,
W. COBURN COOK,
A. HEBER WINDER,
HENRY W. COIL,
ROSS T. HICKCOX,
CHAS. L. CHILDERS,
Counsel for Amici Curiae.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1935.

No. 859

C. L. Ashton et al.,
Petitioners,

vs.

Cameron County Water Improvement District No. One,

BRIEF OF JAMES N. GILLETT, W. COBURN COOK, A. HEBER WINDER, ROSS T. HICKCOX, HENRY W. COIL AND CHAS. L. CHILDERS, AS AMICI CURIAE.

1. PRELIMINARY STATEMENT.

There is now pending in the United States Circuit Court of Appeals for the Ninth Circuit a cause, similar to that involved in this proceeding, and entitled in part, In the Matter of *Imperial Irrigation District,* an Irrigation District, Debtor, in which George F. Covell, creditor of said Irrigation District, appears as appellant and is

represented therein by the undersigned counsel, W. Coburn Cook and others; in the same cause The Southern Sierras Power Company, and others, creditors of said Irrigation District, appear as appellants and are represented therein by the undersigned counsel, Henry W. Coil and Ross T. Hickcox; and in the same cause James H. Jordan, and others, creditors of said Irrigation District, appear as appellants and are represented therein by the undersigned counsel, A. Heber Winder.

There is also now pending in the United States Circuit Court of Appeals for the Ninth Circuit a cause, similar to that involved in this proceeding, entitled in part, *George F. Covell, et al., appellants vs. Waterford Irrigation District,* appellee, in which George F. Covell and others, creditors of said Irrigation District, appear as appellants and are represented therein by the undersigned counsel, W. Coburn Cook.

There is also now pending in the United States Circuit Court of Appeals for the Ninth Circuit a cause, similar to that involved in this proceeding, and which will be entitled in part, In the Matter of *Merced Irrigation District,* an Irrigation District, Debtor, in which James Irvine and others, creditors of said Irrigation District, appear as appellants and are represented therein by the undersigned counsel, James N. Gillett, W. Coburn Cook and others; in the same cause West Coast Life Insurance Company, who is one of the petitioners in this proceeding, is also a creditor of said Merced Irrigation District, and appears as one of the appellants and is represented therein by the undersigned counsel, Chas. L. Childers.

There is also pending in the United States District Court for the Southern District of California, Northern

Division, a cause, similar to that involved in this proceeding, entitled in part, In the Matter of *Lindsay-Strathmore Irrigation District,* an Irrigation District, Debtor, wherein Reed J. Bekins and Milo W. Bekins, as trustees, and others, creditors of said Irrigation District, have appeared and object to proceedings therein and to the plan adopted by the said Irrigation District and are represented by the undersigned counsel, W. Coburn Cook.

There is also pending in the United States District Court for the Southern District of California, Central Division, a cause similar to that involved in this proceeding, and entitled in part, In the Matter of *Palo Verde Irrigation District,* an Irrigation District, Debtor, wherein James H. Jordan and others, creditors of said Irrgation District, have appeared and object to the proceeding and to the plan adopted by said Irrigation District and are represented therein by the undersigned counsel, A. Heber Winder; in the same cause L. F. Abadie, and other creditors of said Irrigation District, have appeared and object to the proceeding and to the plan adopted by said Irrigation District and is represented therein by the undersigned counsel, W. Coburn Cook.

There is also pending in the United States District Court for the Southern District of California, Northern Division, a cause, similar to that involved in this proceeding, entitled in part, In the Matter of *Terra Bella Irrigation District,* an Irrigation District, Debtor, wherein John H. Wheeler, and others, creditors of said Irrigation District, have appeared and object to the proceeding and to the plan adopted by said Irrigation District and are represented therein by the undersigned counsel, W. Coburn Cook.

There is also pending in the United States District Court for the Southern District of California, Southern Division, a cause, similar to that involved in this proceeding, entitled in part, In the Matter of *Vista Irrigation District,* an Irrigation District, Debtor, wherein P. M. Schubert and others, creditors of said Irrigation District, have appeared and object to the proceeding and to the plan adopted by said Irrigation District and are represented therein by the undersigned counsel, W. Coburn Cook.

There is also pending in the United States District Court for the Northern District of California a cause, similar to that involved in this proceeding, and entitled, in part, In the Matter of *Paradise Irrigation District,* an Irrigation District, Debtor, wherein J. R. Mason and others, creditors of said Irrigation District, have appeared and object to the proceeding and to the plan adopted by said irrigation district, and are represented therein by the undersigned counsel, W. Coburn Cook.

There is also pending in the United States District Court for the Northern District of California, a cause, similar to that involved in this proceeding, and entitled in part, In the Matter of *El Dorado Irrigation District,* an Irrigation District, Debtor, wherein E. J. Thomas and others, creditors of said Irrigation District, have appeared and object to the proceeding and to the plan adopted by said irrigation district and are represented therein by the undersigned counsel, W. Coburn Cook.

There is also pending in the United States District Court for the Northern District of California a cause, similar to that involved in this proceeding, and entitled in part, In the Matter of *South San Joaquin Irrigation Dis-*

trict, an Irrigation District, Debtor, wherein Charles D. Bates, and others, creditors of said Irrigation District, have appeared and object to the proceeding and to the plan adopted by said Irrigation District and are represented therein by the undersigned counsel, W. Coburn Cook.

There is also pending in the United States District Court for the Northern District of California a cause, similar to that involved in this proceeding, and entitled in part, In the Matter of *River Junction Reclamation District No. 2064*, wherein John A. Lally and others, creditors of said Reclamation District, have appeared and object to the proceeding and to the plan adopted by said Reclamation District and are represented therein by the undersigned counsel, W. Coburn Cook.

Each of the proceedings above briefly enumerated in which undersigned counsel appear, representing objecting creditors, directly involves the constitutionality of Chapter IX of the Bankruptcy Act, and particularly Section 80 of the said Act, which point is also directly involved in this proceeding. The decision of this Court in this proceeding will materially affect the interests of the parties represented by the undersigned counsel in all of the proceedings above mentioned.

The decision of the Honorable The United States Circuit Court of Appeals for the Fifth Circuit, drawn into question in this proceeding, holds that Section 80 of the Bankruptcy Act is authorized by Section 8, Article I, Clause 4, of the Constitution, which holding the undersigned counsel as *amici curiae* respectfully suggest is out of harmony with previous decisions of Federal and State

courts, and that Section 80 of the Bankruptcy Act is without the power of Congress to enact and is void.

For the purpose of indicating the similarity between an irrigation district under the laws of California and a water improvement district under the laws of Texas, particularly as relates to the political or governmental nature of the California district, we respectfully invite the Court's attention to the following authorities:

Fallbrook Irr. Dist. v. Bradley, 164 U. S. 112, 174.

In *In re Madera Irr. Dist.,* 92 Cal. 296, 323, the court said:

> ". . . But the steps provided for the organization of the district are only for the creation of a public corporation to be invested with certain political duties which it is to exercise in behalf of the state . . ."

In *Bolton v. Terra Bella Irr. Dist.,* 106 Cal. App. 313, 316 (hearing by Supreme Court denied), the court stated:

> ". . . The county is an agency of the state for performing certain functions of government. The legislature has likewise provided for, and authorized, irrigation districts to carry out another function of government. . . ."

In *Woody v. Security Trust & Savings Bank,* 137 Cal. App. 29, 35 (hearing by Supreme Court denied), the court said:

> ". . . An irrigation district possesses governmental functions and is a creature of law which can only be brought into being under the direct authority of the state. . . ."

In *People v. San Joaquin Valley Agricultural Assoc.*, 151 Cal. 797, 799, 805, the court was considering a class of organization not greatly different in its general structure from an irrigation district and said:

> ". . . A consideration of the provisions of that act . . . clearly shows that the association is a public corporation engaged in carrying on one of the objects committed to the state government by the constitution. . . .
>
> "All these considerations conclusively demonstrate that these associations are public agencies of the state, within its exclusive management and control, and charged with the performance of a part of the functions of the state government. . . ."

In *Swampland etc. Dist. No. 341 v. Blumenberg*, 156 Cal. 532, 537, the court said:

> ". . . A levy for such purposes, by a district which has completed its permanent system of ditches, a district which though not a municipal corporation, is at least a public corporation performing some of the functions of government for the local territory interested, bears a close resemblance to ordinary taxes levied to defray the expenses of a city or county. . . ."

In *Miller & Lux v. Board of Supervisors*, 189 Cal. 254, 263, the court said:

> ". . . In the opinion in the Madera District case the irrigation district was treated as a public corporation to be invested with certain political duties to be exercised in behalf of the state. . . ."

Your *amici curiae* approve in its entirety the brief in support of petition for writ of certiorari filed herein by petitioners.

ARGUMENT.

Summary of Argument.

POINT A.

Section 80 of the Bankruptcy Act as added by the Act of May 24, 1934, is not authorized by Clause 4, Section 8, Article I of the Constitution and is prohibited by the Tenth Amendment.

POINT B.

No consent on the part of any state to the impairment of the obligation of contract can confer power upon or add power to the Congress under the Bankruptcy Clause, and unless the power already vests in the Congress to impose a bankruptcy law upon the state and its agencies, independent of any state action, then consent upon the part of the state is void as in violation of Clause 1, Section 10, Article I, of the Constitution.

POINT C.

Section 80 of the Bankruptcy Act violates the Due Process Clause of the Constitution.

(Italics are supplied unless otherwise indicated.)

POINT A.

Section 80 of the Bankruptcy Act Is Not Authorized by the Constitution.

It is respectfully suggested that the United States, through the Congress, does not have power under Clause 4, Section 8, Article I, of the Constitution to enact any bankruptcy measure that will apply to a state or any of the political subdivisions or agencies of a state. The

whole of the bankruptcy power is found in this clause of the Constitution. If the power is not conferred by this clause of the Constitution, then the power does not exist.

It is well established that the United States is a government of delegated powers. Within the powers delegated by the Constitution to the United States it is sovereign and supreme, and those powers may be exercised by the United States upon the states and the people of the United States free and unhindered. As to all power not thus delegated, the state is equally supreme—the state is sovereign. The state within its field—that is, within the field of powers not delegated by, or prohibited to it, by the Constitution—is as complete and independent of the United States as if it were a foreign and independent power.

In *United States v. Butler,* decided January 6, 1936, 56 Sup. Ct. Rep. 312, this Court stated the rule as follows:

> ". . . . It hardly seems necessary to reiterate that ours is a dual form of government: that in every state there are two governments,—the state and the United States. Each State has all governmental powers save such as the people, by their Constitution, have conferred upon the United States, denied to the States, or reserved to themselves. The federal union is a government of delegated powers. It has only such as are expressly conferred upon it and such as are reasonably to be implied from those granted. . . ."

Also:

> "From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such as are conferred, are reserved to

the states or to the people. To forestall any suggestion to the contrary, the Tenth Amendment was adopted. The same proposition, otherwise stated, is that powers not granted are prohibited. . . ."

In *Lane Co. v. Oregon*, 7 Wall. 71, 76, this Court said:

"The people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence. . . ."

In *White v. Hart*, 13 Wall. 646, 650, this Court said:

". . . *The government of the nation and the government of the states are each alike absolute and independent of each other in their respective spheres of action;* . . ."

See, also:

South Carolina v. United States, 199 U. S. 437, 452.

Where power is delegated to, or conferred upon, the United States by the Constitution, that power may be exercised by the United States as that government may determine.

This principle was laid down early in the history of the country by Mr. Chief Justice Marshall in the case of *M'Culloch v. Maryland*, 4 Wheat. 316, 424, where he said:

". . . No trace is to be found in the Constitution of an intention to create a dependence of the government of the Union on those of the States,

> for the execution of the great powers assigned to it. Its means are adequate to its ends; and on those means alone was it expected to rely for the accomplishment of its ends. To impose on it the necessity of restoring to means which it cannot control, which another government may furnish or withhold, would render its course precarious; the result of its measures uncertain, and create a dependence on other governments which might disappoint its most important designs, and is incompatible with the language of the constitution. . . ."

In the *Matter of Quarles,* 158 U. S. 532, 535, this Court, speaking through Mr. Justice Gray, said:

> ". . . The United States are a nation, whose powers of government, legislative, executive and judicial, within the sphere of action confided to it by the constitution, are supreme and paramount. Every right, created by, arising under or dependent upon the constitution, may be protected and enforced by such means and in such manner as Congress, in the exercise of the correlative duty of protection, or of the legislative powers conferred upon it by the constitution, may in its discretion deem most eligible and best adapted to attain the object. . . ."

We thus see that if the Congress is empowered by the Bankruptcy Clause to extend a law on the subject of bankruptcy so as to include a state or its agencies, then it may do so without the consent of the state. If the Congress may authorize a voluntary bankruptcy proceeding by the agent of a state with the consent of the state, it may likewise authorize an involuntary bankruptcy proceeding against the agent of the state and without the consent of the state. If it may apply such a measure,

voluntary or involuntary, by or against the agent of the state, it may apply such a measure to the state itself. It is wholly a question of power.

It will be observed that the Bankruptcy Clause is couched in general language.

It is a well recognized principle of construction that general statutory language does not apply to the sovereign to his disadvantage.

In *Guarantee Title & Trust Co. v. Title Guaranty & Surety Co.*, 224 U. S. 152, 155, the Court reviewed authorities and said:

> "The decision was expressly put upon the ground 'that the sovereign authority of the country is not bound by the words of a statute unless named therein, if the statute tends to restrain or diminish the powers, rights, or interests of the sovereign.' There was much reasoning to sustain the proposition, and it was especially applied to discharges in bankruptcy. Expressing the general assent to the proposition announced, the court said:
>
> " 'Greater unanimity of decision in the courts or of views among text writers can hardly be found upon any important question than exists in respect to this question in the parent country, nor is there any diversity of sentiment in our courts, Federal or state, nor among the text writers of this country.' "

See, also:

United States v. Thompson, 98 U. S. 486, 489;

Marshall v. New York, 254 U. S. 380, 382.

This rule was recognized in the Colonies and passed on from the Colonies to the new states. As we will see,

when a new state is admitted to the Union, it comes into the Union on an equal footing with the original states in all respects. The sovereignty being reserved to the state, all of the states possess the prerogatives of a sovereign, one of which is that the sovereign is not bound by general language which works to its disadvantage. Since a bankruptcy law which would subject the fiscal affairs of the state to an involuntary proceeding would not only be to the disadvantage of the sovereign state, but could actually destroy the independence of the state, it is impossible to conceive that the states, or the people in their sovereign capacity, intended, by the general language of the Bankruptcy Clause, that the independence of the states should thus be put in jeopardy.

In *Coyle v. Smith*, 221 U. S. 559, 566, 571, the Court said:

> "The definition of 'a state' is found in the powers possessed by the original states which adopted the Constitution,—a definition emphasized by the terms employed in all subsequent acts of Congress admitting new states into the Union. The first two states admitted into the Union were the states of Vermont and Kentucky, one as of March 4, 1791, and the other as of June 1, 1792. No terms or conditions were exacted from either. Each act declares that the state is admitted 'as a new and entire member of the United States of America.' 1 Stat. at L. 191, 189 Chaps. 7, 4. Emphatic and significant as is the phrase admitted as 'an entire member,' even stronger was the declaration upon the admission in 1796 of Tennessee (1 Stat. at P. 491, Chap. 47) as the third new state, it being declared to be 'one of the United States of America,' 'on an equal footing with the original states in all respects whatsoever,'—phraseology which

has ever since been substantially followed in admission acts, concluding with the Oklahoma act, which declares that Oklahoma shall be admitted 'on an equal footing with the original states.'

"The power is to admit 'new states into this Union.'

" 'This Union' was and is a union of states, equal in power, dignity, and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself. . . ."

In *Buffington v. Day*, 11 Wall. 113, 126, it is said:

"The supremacy of the general government, therefore, so much relied on in the argument of the counsel for the plaintiff in error, in respect to the question before us, cannot be maintained. *The two governments are upon an equality*, and the question is whether the power 'to lay and collect taxes' enables the general government to tax the salary of a judicial officer of the state, which officer is a means or instrumentality employed to carry into execution one of its most important functions, the administration of the laws, and which concerns the exercise of a right reserved to the states.

"We do not say the mere circumstance of the establishment of the judicial department, and the appointment of officers to administer the laws, being among the reserved powers of the state, disables the general government from levying the tax, as that depends upon the express power 'to lay and collect taxes,' *but it shows that it is an original inherent power never parted with, and in respect to which the supremacy of that government does not exist*, and is of no importance in determining the question; and further, that being an original and reserved

power, and the judicial officers appointed under it being a means or instrumentality employed to carry it into effect; the right and necessity of its unimpaired exercise, and the exemption of the officer from taxation by the general government, stand upon as solid a ground and are maintained by principles and reasons as cogent as those which led to the exemption of the Federal officer in Dobbins v. Erie Co., *supra*, from taxation by the state: *for, in this respect, that is, in respect to the reserved powers, the state is as sovereign and independent as the general government.* And if the means and instrumentalities employed by that government to carry into operation the powers granted to it are necessarily, and, for the sake of self-preservation, exempt from taxation by the states, why are not those of the states depending upon their reserved powers, for like reasons, equally exempt from Federal taxation? Their unimpaired existence in the one case is as essential as in the other. *It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities* of the states, nor is there any prohibiting the states from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation: *as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?"*

See *Rose's Notes*, this case.

The *Buffington* case is without doubt the leading authority upon the subject of the right of the United States

to tax an agency or instrumentality of the state, and it is interesting to note that this Court uses the strong language used in the *Buffington* decision regarding the right of the United States to tax an officer of the state notwithstanding the constitutional provision: "The Congress shall have power to lay and collect taxes, duties, imposts, and excises. . . ." (Art. I, Sec. 8, Cl. 1.) This language is by its terms unlimited. The language, however, is general. The state in the exercise of its reserved powers is sovereign. To tax the state would be to its disadvantage. The exemption is necessarily implied.

Taxing power, the exercise of which is made mandatory by statute for the payment of the principal and interest of the bonds of the taxing district, is one of the highest attributes of sovereignty.

Lane Co. v. Oregon, 7 Wall. 71, 79;
Meriwether v. Garrett, 102 U. S. 472, 515;
In re Madera Irr. Dist., 92 Cal. 296, 322.

In the case of *Heine v. Board of Levee Commissioners*, 19 Wall. (86 U. S.) 655, 661, it was said:

> ". . . It is not only not one of the inherent powers of the court to levy and collect taxes, but it is an invasion by the judiciary of the federal government of the legislative functions of the state government."

See, also:

Thompson v. Allen County, 115 U. S. 550.

What the people meant by the general language used in the Bankruptcy Clause can best be determined by putting ourselves as nearly as possible in the position they occupied at the time when the Constitution was ap-

proved, in other words, by an understanding of the state of the law as it then existed.

This Court recently stated in the case of *Continental Ill. Nat. Bk. & Trust Co. v. Chicago-Rock Island & Pacific Ry. Co.*, 294 U. S. 648, 668:

> "The English law of bankruptcy, as it existed at the time of the adoption of the Constitution, was conceived wholly in the interest of the creditor and proceeded upon the assumption that the debtor was necessarily to be dealt with as an offender. Anything in the nature of voluntary bankruptcy was unknown to that system. Persons who were permitted to fall within the term 'bankrupt' were limited to traders . . ."

The Court then proceeds to point out that the framers of the Constitution did not intend to limit the Congress to the then existing English law and practice upon the subject, and we make the quotation from that decision for its historical value and to show that bankruptcy as then understood was involuntary in nature and the scope of persons who might come within its terms was limited.

In *South Carolina v. United States*, 199 U. S. 437, 450, the Court said:

> "'In this, as in other respects, it must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution. Minor v. Happersett, 21 Wall. 162, 22 L. ed. 627; *Ex parte Wilson*, 114 U. S. 417, 422, 29 L. ed. 89, 91, 5 Sup. Ct. Rep. 935; Boyd v. United States, 116 U. S. 616, 624, 635, 29 L. ed. 746, 748, 749, 6 Sup. Ct. Rep. 524; Smith v. Alabama, 124 U. S. 265, 31 L. ed. 508, 1 Inters. Com. Rep. 804, 8 Sup. Ct. Rep. 564. The language of the Constitution, as has been well said, could not

> be understood without reference to the common law. 1 Kent, Com. 336; Bradley, J., in Moore v. United States, 91 U. S. 270, 274, 23 L. ed. 346, 347.'
>
> "To determine the extent of the grants of power, we must, therefore, place ourselves in the position of the men who framed and adopted the Constitution, and inquire what they must have understood to be the meaning and scope of those grants."

In *Marshall v. Gordon*, 243 U. S. 521, 533, the Court said:

> "Undoubtedly what went before the adoption of the Constitution may be resorted to for the purpose of throwing light on its provisions. . . ."

As we have seen, the common law recognized the prerogative of the sovereign and that the sovereign was not bound by general language of a statute which worked to his disadvantage. This was well understood at the time the Constitution was adopted and was a principle that had been in use from time immemorial.

For a historical discussion of the various bankruptcy statutes, see *Hanover Nat. Bk. v. Moyses*, 186 U. S. 181, 184, also the late case of *Continental Illinois Nat. Bk. & Trust Co. v. Chicago-Rock Island & Pacific Ry. Co.*, *supra*. Suffice it to say in this regard, that prior to the adoption of the Constitution we have no record that any bankruptcy proceeding in any country had ever applied to the sovereign, and since the adoption of the Constitution, until the Congress attempted to enact the measure here involved, no attempt, so far as we are aware, has ever been made by the Congress to apply a bankruptcy statute to a state or any of its agencies or instrumentalities.

We have seen that all powers not delegated to the United States by the Constitution, are reserved to the states or to the people; that, where the power has been surrendered to the United States, that power is complete in itself and may be exercised, in this case, by the Congress as the Congress may determine, and that if the power exists in the Congress to enact a bankruptcy measure that will permit a voluntary proceeding on behalf of the agency of the state, it may likewise enact a measure that will provide for an involuntary bankruptcy proceeding against the same agency, and if it may do so as to the agency of the state, it may do so as to the state itself. The fact that Congress has not seen fit to exercise its full power does not derogate against the power. The Congress may exercise its full power when it deems such action expedient. No bankruptcy measure prior to the adoption of the one here in question seems to have ever been adopted and made to apply to the sovereign. Since such a measure was wholly unknown at the time of the adoption of the Constitution and since the exercise of such a power by the Congress would seem to be incompatible with the exercise of the independent reserve powers of the state, and since the Bankruptcy Clause is couched in the most general language, it is doubted that such extraordinary power in the Congress was ever intended.

That a taxing district, such as the one involved in this case, is an agent of the state performing prescribed functions of government seems to be well established by the decisions of this Court.

Fallbrook Irr. Dist. v. Bradley, 164 U. S. 112, 161;
Houck v. Little River Drainage Dist., 239 U. S. 254, 261;
O'Neill v. Leamer, 239 U. S. 244, 251, 252.

We now pass to our second point.

POINT B.

No Consent on the Part of the State Can Impair the Obligation of Contract or Add to the Powers of the Congress Under the Bankruptcy Clause.

The state is prohibited by Clause 1, Section 10, Article I, of the Constitution from impairing the obligation of contract.

It cannot be doubted that bonds of a taxing district, such as here involved, constitute contracts of that agency and that the law at the time the contracts were made enters into and becomes a part of the contracts. Since both principles are well stated in a recent California decision, a rather extended quotation from that decision seems to be justified.

In *Hershey v. Cole,* 130 Cal. App. 683, 688, 695, in which hearing by Supreme Court was denied, the Court said:

> ". . . This presents the important question: Does there exist in legal effect a contract between the owners of lands upon which an assessment has been levied, and the holders of bonds purchased upon the faith of the security afforded by the unpaid portion of the assessment at the date of the issuance of the bonds?
>
> "In Rorick *et al.* v. Board of Commissioners of Everglades Drainage Dist. *et al.*, 57 Fed. (2d) 1048, tried before Circuit Judge Bryan, and District Judges Sheppard and Strum, a case involving the rights of bondholders of a drainage district, the law is laid

down as follows: 'Legislation by authority of which bonds are issued, and their payment provided for, becomes a constituent part of the contract with the bondholders. Such a contract is within the protection of the Constitution, article I, section 10. The obligation of the bond contract, of which such legislation is a part, cannot be impaired, nor its fulfillment hampered or obstructed by subsequent legislation to the prejudice of the vested rights of bondholders. This rule has reference to subsequent legislation which affects the contract directly, and not incidentally, or only by consequence.' (Citing a number of cases.) 'A different result would leave nothing of the contract, but an abstract right—of no practical value—and render the protection of the Constitution a shadow and a delusion.' . . . An impairment occurs when the value of the contract has been diminished by subsequent legislation. The question of impairment is not one of degree, but of encroaching in any respect upon the obligation—dispensing with any part of its force. (Citing a number of cases.) Though the state cannot by contract surrender its sovereign prerogatives in the performance of essential governmental duties (citing authorities), nevertheless, when the state authorizes a taxing subdivision to contract by issuing bonds and to exercise the power of local taxation to the extent necessary to meet such obligations, the power thus given cannot be withdrawn so long as its exercise is necessary to satisfy the vested rights of bondholders. In such cases, the state and the subordinate taxing

unit are equally bound. 'The power given becomes a trust which the donor cannot annul, and which the donee is bound to execute.' (Citing a number of authorities.)

"It also appears to be well settled that the law in force under which bonds are issued, enters into and becomes a part of the contract. This is clearly set forth in the well-considered case of Oklahoma Cotton Growers Assn. v. Salver, 114 Okl. 77 (243 Pac. 232). We quote therefrom as follows: 'The existing statutes and the settled law of the land at the time a contract is made become a part of it, and must be read into it. All contracts are therefore to be construed in the light of the rules and principles of law applicable to the subject matter of the transaction, and those rules and principles control the rights of the parties, except where the contract discloses an intention to depart therefrom. However, from the fact that every contract, not expressly providing to the contrary, is presumed to have been made with reference to the then existing state of the law, it follows that if a subsequent change is made therein which in any degree affects such contract, such change is presumed to be excepted therefrom. (6 R. C. L., p. 855; 13 C. J., p. 247; Deweese v. Smith, 106 Fed. 438 (45 C. C. A. 408, 66 L. R. A. 971); cases in note to Union Central Ins. Co. v. Pollard, 36 L. R. A. 271). The laws upon the subject of a contract are read into and become a part thereof to the same extent as though they were written into its terms. (Armour Packing Co. v. United States, 153 Fed. 1 (82 C. C. A. 135, 14 L. R. A. (N. S.) 400).)' . . ."

It follows that if these contracts (bond) are to be impaired without the consent of the parties, it must be done under the Bankruptcy Clause and not otherwise. All other impairment is expressly prohibited. If Congress has this power, it may be exercised through proceedings, voluntary or involuntary, with or without, or over, the protests of the state, or in behalf of, or against, the agency of the state or the state itself. If the Congress does not have the power, the state is wholly powerless to give it except through concurrent action in the form of an amendment to the Constitution. An extremely important feature of the American constitutional arrangement is the reservation of power to the states or the people. One state cannot amend the Constitution.

Surely, since the Constitution of the United States prohibits the state from impairing the obligation of contracts, the Congress of the United States cannot empower the state to do so.

Equally, if the Constitution of the United States does not authorize the Congress to pass a bankruptcy act which would apply to a state or a state agency, the legislature of the state cannot pass an act to authorize Congress to do so.

In *Hopkins v. Cleary*, 296 U. S. 315, the Court said:

> "Aside from the direct interest of the state in the preservation of agencies established for the common good, there is thus the duty of the *parens patriae* to keep faith with those who have put their trust in the

parental power. True, most of the shareholders in the cases now before us assented to the change. Even so, an important minority were not represented at the meeting, and their approval is not shown. Creditors other than shareholders have not been heard from at all. To these non-vocal classes the parens owes a duty."

Since the state cannot impair the obligation of contracts, any action on the part of the state which would lead to that result is necessarily void, excepting only as a procedural measure which the Congress might require as it has in the Act here in question (U. S. C. A., Title 11, Sec. 303), but such requirement on the part of the Congress whereby one state may be subject to the Act, and another excluded from the Act, depending upon the wishes of the state, automatically and at once destroys the uniformity which the Constitution requires.

It is well established by the decisions of this Court that the uniform requirements of the Constitution, in regard to a bankruptcy act, is a geographical uniformity.

Hanover Nat. Bk. v. Moyses, 186 U. S. 181, 188.

The case is not analogous to those where the state can waive its sovereign immunity, such as its immunity to suit or execution. In those cases the state is not restricted beyond its own will. Here it is expressly prohibited from impairing the obligation of contracts.

POINT C.

Section 80 of the Bankruptcy Act Violates the Fifth Amendment.

Under the Act in question lands in the same geographical territory may well be obligated upon bonds of a county, a city, a school district, a drainage district and many other similar taxing districts besides the one attempting to scale down its indebtedness under the Act. Likewise, the same lands may at the same time be encumbered with private mortgages.

The Act purports to permit one of these taxing districts, such as the one involved in this case, to scale down its debt without in any manner affecting the debt of any other taxing district or mortgagor, except the obvious effect of improving the security for the benefit of the holders of the bonds or mortgages otherwise unaffected. Perhaps, in most cases, the liens of the taxing districts are on a parity, and we believe, in every case, the private mortgage is junior. By his contract the bondholder is entitled to have taxes levied to pay his bonds; to have delinquent property sold to satisfy the lien; to purchase, at least in some cases, at tax sales. These rights and remedies seem to have been largely removed, or at least lessened, by the Act, as to the holder of the bonds of the taxing district seeking to readjust its debts, but preserving them or indeed improving them as to the others. The private mortgage holder, whose duty it is to see that the tax is paid, has his security both preserved and improved.

The effect is to take from one class of creditor his property for the benefit of another class of creditor and without compensation or due process of law.

Conclusion.

It is respectfully suggested that the general language used in the Bankruptcy Clause could not have been intended to confer upon the Congress power to apply a bankruptcy statute to the reserved sovereignty of the state, and since the states are prohibited from impairing the obligation of contracts and cannot by their consent or otherwise, add to the powers of the Congress, and since property rights are taken without due process, and considering the other points suggested by petitioners, the Act here in question is unconstitutional and void.

Respectfully submitted,

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1935

No. 859

C. L. ASHTON, et al.,

Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. ONE,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF CONTENTIONS OF PETITIONERS

and

BRIEF IN SUPPORT THEREOF.

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1935

No. 859

C. L. ASHTON, et al.,
Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. ONE,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF CONTENTIONS OF PETITIONERS.

May it Please the Court:

The undersigned are attorneys for Florence Moore, American Trust Company, as Trustee, and Crocker First National Bank, as Trustee, all as protesting bondholders in The Matter of Merced Irrigation District, which was No. 3907 in Bankruptcy, in the United States District Court for the Southern District of California, Northern Division, and is now

pending on appeal in the United States Circuit Court of Appeals for the Ninth Circuit.

The Merced Irrigation District proceeding is a proceeding under Section 80 of the Bankruptcy Act, as amended, and therefore will probably turn upon questions of law that will be determined in the present case by this Honorable Court.

The undersigned therefore respectfully move this Honorable Court for leave to file their accompanying brief as *amici curiae*.

Dated, San Francisco, California,
April 20, 1936.

HERMAN PHLEGER,
MAURICE E. HARRISON,
As Amici Curiae.

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BRIEF AS AMICI CURIAE IN SUPPORT OF CONTENTIONS OF PETITIONERS.

PRELIMINARY STATEMENT.

The reasons impelling us to file this brief are stated in the accompanying petition for leave to file it, and will not, therefore, be repeated here. We set forth in this brief our contention that Section 80 of the Bankruptcy Act is unconstitutional.

SUMMARY OF ARGUMENT.

Point I. Neither the State nor its governmental agencies may be subjected to the bankruptcy power.

(a) The power to borrow on the credit of taxation is vital to the sovereignty of the States.

(b) The Bankruptcy Clause contains no warrant for federal interference with the borrowing power of the States.

(c) If Section 80 were valid, it would seriously limit and hamper the borrowing power of the States.

(d) Wide-spread similarity of local conditions or events does not transfer power from the States to the Congress.

Point II. The lack of power in Congress to subject a State or its governmental agencies to bankruptcy is not aided by the consent of the State.

Point III. The character of irrigation districts.

(a) The acts of quasi municipal corporations are acts of the State.

Point IV. The municipal bankruptcy provision cannot be defended as an "emergency measure".

Point V. Section 80 violates the fundamental principles of bankruptcy, and so is not a law "on the subject of bankruptcies".

(a) Action under Section 80 is no less a repudiation of public debts because the statute requires the consent of a proportion of creditors.

Point VI. This Court has never held that secured creditors, even when members of a class, may be compelled to surrender substantial security rights.

(a) The holders of public bonds are in effect secured creditors.

Point VII. The fundamental questions of public policy involved in the repudiation of public debts must be decided by the sovereign whose debts are in question.

(a) The inviolability of public obligations stands above the bankrupty power.

Point VIII. Conclusion.

ARGUMENT.

I.

NEITHER THE STATE NOR ITS GOVERNMENTAL AGENCIES MAY BE SUBJECTED TO THE BANKRUPTCY POWER.

We believe that the determining question is whether Congress can or cannot subject the State to bankruptcy proceedings. Once that question is answered, the issue before the Court becomes easy of solution. We submit that it must be answered in the negative, under the doctrine of

Collector v. Day, 11 Wall. 113.

"The States within the limits of their powers not granted, or, in the language of the Tenth Amendment, 'reserved' are as independent of the general government as that government within its sphere is independent of the States. * * * Such being the separate and independent condi-

> tion of the States in our complex system, as recognized by the Constitution, and the existence of which is so indispensable, * * * it would seem to follow, as a reasonable, if not a necessary consequence, that the means and instrumentalities employed for carrying on the operations of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired, should not be liable to be crippled, much less defeated by the taxing power of another government * * *"

The rule of *Collector v. Day,* has, of course, been followed in later decisions of the Supreme Court:

Ambrosini v. United States, 187 U. S. 1, 47 L. ed. 49;

Indian Motorcycle Co. v. United States, 283 U. S. 574, 75 L. ed. 1281,

and disposes, we submit, of the question put.

We urge that on this authority alone, the Congress has no power to interfere with the management and control by the States of their fiscal affairs.

(a) The power to borrow on the credit of taxation is vital to the sovereignty of the States.

In *Perry v. United States,* 294 U. S. 330, the Court said of the borrowing power of Congress:

> "* * * the right to make binding obligations is a competence attaching to sovereignty. In the United States, sovereignty resides in the people who act through the organs established by the Constitution. * * *
>
> "The Constitution gives to the Congress the power to borrow money on the credit of the

United States, an unqualified power, a power vital to the Government,—upon which in an extremity its very life may depend. The binding quality of the promise of the United States is of the essence of the credit which is so pledged. Having this power to authorize the issue of definite obligations for the payment of money borrowed, the Congress has not been vested with authority to alter or destroy those obligations. The fact that the United States may not be sued without its consent is a matter of procedure which does not affect the legal and binding character of its contracts. While the Congress is under no duty to provide remedies through the courts, the contractual obligation still exists and, despite infirmities of procedure, remains binding upon the conscience of the sovereign."

(b) The Bankruptcy Clause contains no warrant for federal interference with the borrowing power of the States.

The unsurrendered sovereign powers of the States include power to make contracts that may not be repudiated.

The Ohio Life Ins. Co. v. Debolt, 16 How. 416:

Speaking of contracts granting exemption from State taxation, Mr. Chief Justice Taney said:

"There are, undoubtedly, fixed and immutable principles of justice, sound policy and public duty, which no state can disregard without serious injury to the community, and to the individual citizens who compose it. And contracts are sometimes incautiously made by states as well as individuals; and franchises, immunities, and exemptions from public burdens improvidently granted. But whether such contracts should be made or not, is exclusively for the consideration

of the State. It is the exercise of an undoubted power of sovereignty which has not been surrendered by the adoption of the Constitution of the United States, and over which this court has no control. For it can never be maintained in any tribunal in this country, that the people of a state, in the exercise of the powers of sovereignty, can be restrained within narrower limits than those fixed by the Constitution of the United States, upon the ground that they may make contracts ruinous or injurious to themselves * * *

"Banks and other companies may be exempted, by contract, from their equal share of the taxes, under the belief that the corporation will prove to be a public benefit. Experience may prove that it is a public injury. Yet, if the contract was within the scope of the authority conferred by the Constitution of the State, it is like any other contract made by competent authority, binding upon the parties. Nor can the people or their representatives, by any act of theirs afterwards, impair its obligation. When the contract is made, the Constitution of the United States acts upon it, and declares that it shall not be impaired, and makes it the duty of this court to carry it into execution. That duty must be performed."

See also:

Perry v. United States, supra.

Many States have adopted constitutional provisions, of which the following is typical:

Constitution of North Dakota, Sec. 184:

"Any city, county, township, town, school district, or any other political subdivision incurring indebtedness shall at or before the time of so-

> doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrepealable until such debt be paid."

There are many and varying provisions in other State Constitutions of the same general import. *Stimson, Federal and State Constitutions,* page 290. Nearly all State Constitutions have their own provisions forbidding laws impairing the obligation of contracts. *Stimson,* op. cit., p. 292. It is too clear for argument that the power to adopt provisions like those quoted above is not surrendered to the Federal Government by the United States Constitution, nor forbidden to the States by that instrument.

But if Section 80 of the Bankruptcy Act is valid, then it necessarily supersedes the provisions in State Constitutions like those quoted above. The question inescapably presented, therefore, is the question whether or not the grant to Congress of power to enact uniform laws on the subject of bankruptcy gave Congress power to override provisions like these, adopted by the people of the several States in their Constitutions, whereby public debts for which the taxing power is pledged must be paid. We respectfully submit that there can be but one answer to this question.

Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, holds that the bankruptcy power is subject to constitutional limitations. It repudiates the view that Congress in exercising the bankruptcy power is

unrestrained by the limitations applicable to other powers. There is nothing magical or transcendant about the power over bankruptcies. Just as in the Frazier-Lemke case, the Fifth Amendment limited the power, so here the reserved rights of the States and the dual scheme of government inherent in the Constitution forbid the exercise of the power. If the bankruptcy power is subject to explicit prohibitions of the Constitution, it is equally subject to those which are implicit.

The grant to Congress of bankruptcy power is very different, we submit, from the grant of power like that contained in the Commerce Clause, under which it is held that Congress may encroach upon and limit the control of the States over local affairs. Most of the powers granted to the Federal Government are powers not only convenient, but necessary to the preservation of national unity. The bankruptcy power, however, is simply one item of police power, granted to the Federal Government because of the ill effects and inconvenience of diverse laws on the subject. There is, therefore, no shadow of need, in aid of the bankruptcy power, to encroach upon the domain of the States. Quite different considerations justify Congressional regulation, for example, of intrastate railroad rates, or Congressional restrictions upon State taxation of national bank stock.

(c) If Section 80 were valid, it would seriously limit and hamper the borrowing power of the States.

Federal power to compel, or to permit, or refuse to permit, repudiation of debts incurred by the States for governmental purposes, and secured by a pledge

of the taxing power, would obviously be power to interfere substantially with the exercise of any and all of the sovereign powers reserved to the States. Clearly, the power to borrow money is essential to the exercise of nearly all the other powers of a State. Section 80 would, by depriving the States of power to make irrevocable contracts, seriously impair and regulate their borrowing power.

Moreover, Section 80 empowers the Federal Bankruptcy Courts to alter contracts made by State agencies in other respects, by

> "modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; * * *" (11 U. S. C. Sec. 303 (b) (1)).

The Courts may also

> "* * * direct the rejection of contracts of the taxing district executory in whole or in part: * * *" (11 U. S. C. Sec. 303 (c) (5)).

(d) Wide-spread similarity of local conditions or events does not transfer power from the States to the Congress.

We shall endeavor to show under Point IV, that no "national emergency" is involved. We now call attention to the principles laid down in *United States v. Butler*, ... U. S. ....., 80 L. ed. (Adv. Ops.) 287, 56 Sup. Ct. Rep. 312, where the Court said:

> "It does not help to declare that local conditions throughout the nation have created a situation of national concern; for this is but to say that whenever there is a widespread similarity of local conditions, Congress may ignore constitutional

limitations upon its own powers and usurp those reserved to the states. If, in lieu of compulsory regulation of subjects within the states' reserved jurisdiction, which is prohibited, the Congress could invoke the taxing and spending power as a means to accomplish the same end, clause 1 of section 8 of article I would become the instrument for total subversion of the governmental powers reserved to the individual states."

II.

THE LACK OF POWER IN CONGRESS TO SUBJECT A STATE OR ITS GOVERNMENTAL AGENCIES TO BANKRUPTCY IS NOT AIDED BY THE CONSENT OF THE STATE.

If the Congress has power, under the bankruptcy clause, to settle and discharge the obligations of a State (and therefore, as an incident of that power, to compel the acceptance of a composition), then of course it needs no consent of the State to exercise the power, any more than it needs the consent of the State to exercise any other power granted by the Constitution. But if, as we believe, the power does not exist, it is because of limitations implied and expressed in the Constitution itself, and any attempt to claim the power is nugatory and vain unless and until the Constitution is amended so as to grant the power. The powers of the Federal Government cannot be enlarged by mere act of the Legislature of any State, or even by action of the Legislatures of all of the States. The question whether the State Legislature has consented to the administration of its fiscal affairs under Act of Congress is therefore a false ele-

ment in the situation. Such a consent would be as meaningless as a consent that Congress might regulate the punishment of burglary or might adopt zoning ordinances for our cities. New power can be given by new constitutional provision and not otherwise.

As this Court said in the case of *In re Rahrer,* 140 U. S. 545:

> "It does not admit of argument that Congress can neither delegate its powers nor enlarge those of a State."

Conversely, it must be true that the powers of Congress cannot be added to by consent of one or more of the States.

The cases decided under the Wilson Act and the Webb-Kenyon Law, contain nothing that militates against this proposition. Those cases held at most that the police power of the States may operate to affect the interstate shipment of liquor when Congress has (by declaring that shipment to be unlawful), divested it of status as a transaction in interstate commerce entitled to immunity from interference by the States.

Pollard v. Hagan, 3 How. 212, lays down principles bearing on the relation between the powers of the States and the powers of the Federal Government, which we submit, are both fundamental and sound. Some explanation of the events leading up to this case is necessary to an understanding of the decision.

In 1802 part of the land which afterward became the State of Alabama was ceded by the State of Georgia to the United States. The deed provided

that when new States were admitted to the Union, carved out of the territory ceded, they should be admitted with the same status and rights as are possessed by other States of the Union. The cession by Georgia was held to be sanctioned by Article IV, Section 3 of the Constitution. Later the territory of Alabama was formed; and in 1819, Congress passed a statute looking to the admission of Alabama as a State, the new State to consist in part of lands within the cession by Georgia to the United States referred to above. The statute provided in part that the inhabitants of the territory of Alabama should elect a constitutional convention, and that

> "* * * the said convention shall provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said territory, do agree and declare that they forever disclaim all right and title to the waste or unappropriated lands lying within the said territory; and that the same shall be and remain at the sole and entire disposition of the United States; * * *" (3 Stats. 492).

This condition was complied with.

The *Pollard* case was an action of ejectment; and the question in the case was whether a patent from the United States to plaintiff for certain tidelands in Alabama conveyed any title. The defendant contended that the title to tidelands was in the State, and that the patent therefore conveyed nothing. Plaintiff argued, among other things, that

> "* * * by the compact between the United States and Alabama, on her admission into the

> Union, it was agreed, that the people of Alabama forever disclaimed all right or title to the waste or unappropriated lands lying within the State, and that the same should remain at the sole disposal of the United States; * * *"

The Court held this argument to be without merit. Speaking of the agreement between Alabama and the Federal Government, the Court said in part:

> "And, if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty, and eminent domain to the United States, such stipulation would have been void and inoperative; because, the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in the cases in which it is expressly granted * * *
>
> "We, therefore, think the United States hold the public lands within the new States by force of the deeds of cession, and the statutes connected with them, and not by any municipal sovereignty which it may be supposed they possess, or have reserved by compact with the new States, for that particular purpose. The provision of the Constitution above referred to shows that no such power can be exercised by the United States within a State."

The Court said that the Act of Congress requiring Alabama's disclaimer

> "* * * cannot operate as a contract between the parties, but is binding as a law. Full power is given to Congress 'to make all needful rules and regulations respecting the territory or other

property of the United States.' This authorized the passage of all laws necessary to secure the rights of the United States to the public lands, and to provide for their sale, and to protect them from taxation.

"And all constitutional laws are binding on the people, in the new States and the old ones, whether they consent to be bound by them or not. Every constitutional act of Congress is passed by the will of the people of the United States, expressed through their representatives, on the subject matter of the enactment; and when so passed it becomes the supreme law of the land, and operates by its own force on the subject matter, in whatever State or territory it may happen to be. The proposition, therefore, that such a law cannot operate upon the subject matter of its enactment, without the express consent of the people of the new State where it may happen to be, contains its own refutation, and requires no farther examination. The propositions submitted to the people of the Alabama territory, for their acceptance or rejection by the act of Congress authorizing them to form a constitution and State government for themselves, so far as they related to the public land within that territory, amounted to nothing more nor less than rules and regulations respecting the sales and disposition of the public lands. The supposed compact relied on by the counsel for the plaintiffs, conferred no authority therefore, on Congress to pass the act granting to the plaintiffs the land in controversy."

The statute looking to the admission of Alabama contained a further provision that

> "* * * all navigable waters within the said state shall forever remain public highways, free to the citizens of said state and of the United States, without any tax, duty, impost, or toll, therefor, imposed by the said state."

Speaking of this provision, the Court said:

> "In the case of Martin et al. v. Waddel (16 Peters, 410), the present Chief Justice, in delivering the opinion of the court, said: 'When the Revolution took place, the people of each State became themselves sovereign; and in that character hold the absolute right to all their navigable waters, and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution'. Then to Alabama belong the navigable waters, and soils under them, in controversy in this case, subject to the rights surrendered by the Constitution to the United States; and no compact that might be made between her and the United States could diminish or enlarge these rights.
>
> "The declaration, therefore, contained in the compact entered into between them when Alabama was admitted into the Union, 'that all navigable waters within the said State shall forever remain public highways, free to the citizens of said State, and of the United States, without any tax, duty, impost, or toll therefor, imposed by the said State', would be void if inconsistent with the Constitution of the United States."

It appears to be clear, therefore, that the State's consent cannot save the Federal statute.

III.

THE CHARACTER OF IRRIGATION DISTRICTS.

Irrigation districts are quasi municipal corporations, governmental agencies of the State endowed with some of its sovereign powers, including the power to borrow on the credit of taxation, and the power of taxation itself.

> 1 *McQuillin, Municipal Corporations* (2d ed.), Sec. 135.

Such districts are described as follows by the Supreme Court of California in *Morrison v. Smith Bros. Inc.*, 211 Cal. 36:

> "The other type of public corporation upon whose tort liability this court has already passed is typified by irrigation, reclamation or drainage organizations, whose main purpose is to assist the state in reclaiming, improving and aiding the productivity of farm lands. In reference to this type of organization the law is well settled that, subject to certain exceptions not important in this case, they are not liable for the torts of their agents, upon the theory that they are state agencies, performing a governmental function. (Whiteman v. Anderson-Cottonwood Irr. Dist., 60 Cal. App. 234, 236 (212 Pac. 706); Nissen v. Cordua Irr. Dist., 204 Cal. 542 (269 Pac. 171).) * * * In the leading case of In re Madera Irr. Dist., 92 Cal. 296, 318 (27 Am. St. Rep. 106, 14 L. R. A. 755, 28 Pac. 272, 675), such organizations were referred to as 'public corporations' for 'governmental purposes', and, at page 317, as 'the agents or representatives of the state in the particular locality in which they exist'. In Nissen v. Cordua Irr. Dist., supra, at page 545, and in Lindsay-Strathmore Irr. Dist. v. Su-

perior Court, 182 Cal. 315, 335 (187 Pac. 1056), they are referred to as 'public agencies'. In Jenison v. Redfield, 149 Cal. 500, 501 (87 Pac. 62), they are called 'public corporations'. In Turlock Irr. Dist. v. White, 186 Cal. 183, 187 (17 A. L. R. 72, 198 Pac. 1060), it was said 'that such a corporation is not a municipal corporation, but a public corporation for municipal purposes.' In People v. Reclamation Dist., 117 Cal. 114, 120 (48 Pac. 1016), it was said that 'if these districts can be said to be corporations at all, I think they are properly called public corporations for municipal purposes. That phrase means no more than that they are state organizations for state purposes.' In Whiteman v. Anderson-Cottonwood Irr. Dist., supra, at page 237, it is said: 'As to the character of irrigation districts as organized under our statute, it must be conceded that they are public corporations or public agencies, but not "municipal corporations" as that term is usually understood.' And in Western Assur. Co. v. Sacramento etc. Drainage Dist., 72 Cal. App. 68, 76 (237 Pac. 59), they are referred to as 'governmental agencies of the state'."

See, also:

Hensley v. Reclamation District No. 556, 121 Cal. 96, 97;

Lindsay-Strathmore Irrigation District v. Superior Court, 182 Cal. 315, 335.

(a) The acts of quasi municipal corporations are acts of the State.

There can, we submit, be no doubt that when a quasi municipal corporation borrows money or makes contracts or levies taxes in aid of public improvements,

the validity of its acts rests upon, and they are an exercise of, the power of the State to further the public welfare by such means, either through the agency of the central government of the State or through agencies like these. In addition to the authorities cited above, see

Memphis & C. Ry. Co. v. Pace, 282 U. S. 241.

In *Fallbrook Irrigation District v. Bradley,* 164 U. S. 112, 174, the Court said, speaking of California irrigation districts:

> "The formation of one of these irrigation districts amounts to the creation of a public corporation, and their officers are public officers."

In *Houck v. Little River Drainage District,* 239 U. S. 254, 263, a Missouri drainage district was described by Mr. Justice Hughes, as he then was, as having been "constituted a political subdivision of the State for the purpose of performing prescribed functions of government."

IV.

THE MUNICIPAL BANKRUPTCY PROVISION CANNOT BE DEFENDED AS AN "EMERGENCY MEASURE".

Section 78 of the Bankruptcy Act recites in defense of the municipal bankruptcy provision, that

> "There is hereby found, determined, and declared to exist a national emergency caused by increasing financial difficulties of many local governmental units, which renders imperative the further exercise of the bankruptcy powers of the Congress of the United States."

But in *A. L. A. Schecter Poultry Corp. v. United States,* 295 U. S. 495, it was held that

> "Extraordinary conditions do not create or enlarge constitutional power."

It may be observed moreover, that events have not substantiated this legislative declaration. It is said that but five States have enacted statutes authorizing their municipalities to invoke Section 80; and that in the ten months that have elapsed since its enactment, only a handful of the thousands of municipalities and State agencies in the country have sought the proffered relief. 35 *Columbia L. Rev.* 428, 437, 438.

V.

SECTION 80 VIOLATES THE FUNDAMENTAL PRINCIPLES OF BANKRUPTCY, AND SO IS NOT A LAW "ON THE SUBJECT OF BANKRUPTCIES".

The case of *Northern Pacific Ry. Co. v. Boyd,* 222 U. S. 482 (as elaborated in later decisions), establishes the following fundamental qualities that a plan of corporate reorganization must have to be binding on non-consenting creditors:

(1) It must give precedence to the entire claims of creditors, including unsecured creditors, over any participation or interest of stockholders in the old company.

(2) The entire amount of claims of a preferred class must have precedence over claims of subordinate classes.

(3) The plan must not discriminate among the members of any one class of creditors.

The fourth syllabus in *Kansas City Terminal Ry. Co. v. Central Union Trust Co.*, 271 U. S. 445, reads in part as follows:

> "* * * a plan of reorganization of railroad company which does not give precedence to entire claim of unsecured creditors over any part or interest of stockholders in old company, is insufficient as to unsecured creditors, and not binding on them."

It is well settled that for a plan to be fair as between classes of creditors, it must satisfy their claims in the order of priority.

Louisville Trust Co. v. Louisville Ry. Co., 174 U. S. 674;

St. Louis-S. F. Ry. Co. v. McElvain, 253 F. 123;

Mountain States Power Co. v. Jordon Lumber Co., 293 F. 502.

In *Eagelson v. Pacific Timber Co.*, 270 Fed. 1008, the plan gave persons holding common stock share for share in the new company, but holders of common who also held preferred stock were not permitted to trade in their common until they had paid $10 in cash for each share of preferred, for which they received a new preferred share of $10 par value. The majority of common stockholders held common only. The dissenting minority held common and preferred in about equal amounts. The Court said at page 1110:

> "* * * The several holders of the common stock were, among themselves, denied equal rights of participation in the new company * * * as the

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> holders of more than half of the common stock * * * had none, or practically no preferred stock, while many persons, including the plaintiff and the intervenors, held substantially equal amounts of preferred and common stock, it is manifest that the plan of reorganization was for the benefit of the majority to the detriment of the minority, and consequently unfair and fraudulent."

We respectfully submit that the principles referred to above are fundamental, and inherent in the idea of bankruptcy.

As applied to debts of governmental agencies, Section 80 inevitably violates each of them, as we now propose to show.

The Court may take judicial notice of the fact that bonds of municipalities, school districts, drainage districts, improvement districts, and so on, almost universally overlap, so that bonds of two or more of such governmental agencies will almost always be found to be collectible by taxation of the same land. The scaling down of the debts of an irrigation district, therefore, will in almost all cases necessarily result in discrimination against those debts, and in favor of the holders of bonds of other governmental agencies, collectible by taxation of the same land. For to the extent that the ability of the land to pay is improved by the scaling down of the debts dealt with in the bankruptcy proceeding, the position of overlapping bonds is improved.

Bonds of governmental agencies are, of course, sometimes of equal rank and sometimes not. In Cali-

fornia, for example, most county, municipal and quasi municipal bonds are of equal rank.

La Mesa Irr. Dist. v. Hornbeck, 216 Cal. 730;
San Joaquin Irr. Dist. v. Neumiller, 2 Cal. (2d) 485.

Public bonds are universally prior in rank to mortgages and other liens securing private debts.

The result, therefore, of the application of Section 80 to public bonds is inevitably to prefer junior claims to senior claims, and to discriminate among claims of equal rank.

It is almost universally held that the property of municipal and quasi municipal corporations is, with occasional and minor exceptions, incapable of being sold or otherwise subjected to the claims of creditors.

> "The property of a public corporation acquired by it for public uses, and in its capacity as a governmental agent, is held in trust for the uses and purposes for which acquired. Trust property owned by a municipality and held for public purposes can not be reached by process and sold to satisfy its debts any more than other trust property can be sold to satisfy individual debts of any other trustee. A judgment against a municipality, therefore, in the absence of express statutory provisions, can not be enforced by execution; nor is it a lien upon any of its property. This principle has been universally adopted on the grounds of public policy, since, it is not considered permissible or advisable that the state or its governmental subdivisions should be hampered or prevented through a loss of its public property from exercising its public pow-

ers or carrying out its governmental functions." (1 *Jones, Bonds and Bond Securities* (4th ed.), Sec. 480. See also Sec. 543.)

But most of this same property is generally acquired with funds obtained by the sale of bonds. Section 80, therefore, necessarily results as follows: An irrigation district or other similar district is organized and acquires assets by the issuance of bonds. It later becoming inconvenient for the district to meet its obligations, it applies for relief under Section 80. The district in this proceeding has everything to gain and nothing to lose; the Court has no power to force any plan on the district against its consent; it has no power to subject the assets of the district to the satisfaction of the claims of its creditors. On the other hand, if by obstruction, delay and intimidation, the district can persuade the required proportion of its bondholders to consent, it may not only escape from its obligations, but may keep all of the property bought with the proceeds.

We earnestly submit that in view of these considerations, the relations between these governmental agencies and their creditors are such as to render it impossible to subject that relation to the operation of bankruptcy proceedings without violating both the fundamental rights of the bondholders and the elementary principles of justice discussed above, which, we submit, are inherent in the idea of bankruptcy.

(a) Action under Section 80 is no less a repudiation of public debts because the statute requires the consent of a proportion of creditors.

In support of the proposition just stated, we refer to *Louisville Joint Stock Land Bank v. Radford,* 295 U. S. 555.

It is to be observed, moreover, that the circumstances attending a "composition" between a State agency and its creditors are very different from what they are in the case of a private debtor. The capacity of a State or its governmental agencies to frustrate their creditors is well known. In *Rees v. Watertown,* 19 Wall. 107, plaintiff owned bonds of a city. A writ of mandamus directing the city council to levy a tax had proven fruitless. It was here sought to have the Court itself levy a tax. The Court said:

> "We are of the opinion that this court has not the power to direct a tax to be levied for the payment of these judgments. This power to impose burdens and raise money is the highest attribute of sovereignty, and is exercised, first, to raise money for public purposes only; and, second, by the power of legislative authority only. It is a power that has not been extended to the judiciary. Especially is it beyond the power of the Federal judiciary to assume the place of a state in the exercise of this authority at once so delicate and so important."

In *Heine v. Board,* 19 Wall. 655, a similar case, the Court said:

> "It is not only not one of the inherent powers of the court to levy and collect taxes, but it is an invasion by the judiciary of the Federal Govern-

ment of the legislative functions of the state government. It is a most extraordinary request, and a compliance with it would involve consequences no less out of the way of judicial procedure, the end of which no wisdom can foresee."

See:

Jones, Bonds and Bond Securities (4th ed.), Secs. 486, 490.

Assuming, as appears to have been intimated in the *Radford* case, supra, that consent to a plan by a majority of a class of creditors may sometimes be sufficient assurance that the plan is "for the best interest of the creditors", and not a "taking" of their property, we submit that no such inference can be drawn from consent given by a proportion of the creditors of a State or political subdivision.

VI.

THIS COURT HAS NEVER HELD THAT SECURED CREDITORS, EVEN WHEN MEMBERS OF A CLASS, MAY BE COMPELLED TO SURRENDER SUBSTANTIAL SECURITY RIGHTS.

The decisions of this Court in *Continental Illinois National Bank & Trust Company v. Chicago R. I. & P. R. Co.*, 294 U. S. 648, and *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, leave open the question whether the property rights of a secured creditor may, consistently with the Fifth Amendment, be taken from him against his consent in a bankruptcy proceeding, where a majority of similar creditors consent.

(a) The holders of public bonds are in effect secured creditors.

Generally speaking, public bonds are not a lien on any property. 1 *Jones, Bonds and Bond Securities* (4th ed.), Sec. 480. It is submitted, however, that the right of the holders of municipal and quasi municipal bonds to compel the exercise of the taxing power for the satisfaction of their claim is at least as definitely a property right as are the rights of mortgagees. Mortgagees in most States now have only a lien, the primary value of which is the right to compel a sale of the property and application of the proceeds to the debt. The rights of a public bondholder are at least of equal dignity; he, like the mortgagee, has a preferred right to compel the sale of property for the satisfaction of his claim.

VII.

THE FUNDAMENTAL QUESTIONS OF PUBLIC POLICY INVOLVED IN THE REPUDIATION OF PUBLIC DEBTS MUST BE DECIDED BY THE SOVEREIGN WHOSE DEBTS ARE IN QUESTION.

We need not enlarge upon the gravity and fundamental nature of the questions of public policy that are decided one way or the other by the repudiation of public debts. And surely the bankruptcy clause contains no warrant for the proposition that power to decide these questions for the States is granted to the Congress.

As shown above, if the power is not granted, then acquiescence by the States, or some of them, in Congressional usurpation adds nothing to the situation.

(a) The inviolability of public obligations stands above the bankruptcy power.

Neither the Federal Government nor a State has authority to alter or destroy its obligations. See *Perry v. United States*, 294 U. S. 330.

We respectfully submit that this proposition rests on higher ground than can be reached by power to enact uniform laws on the subject of bankruptcies.

VIII.

CONCLUSION.

Because of the considerations dealt with above, and in the brief of petitioners, we respectfully urge that Section 80 of the Bankruptcy Act is unconstitutional.

Dated, San Francisco, California,
April 20, 1936.

Respectfully submitted,
HERMAN PHLEGER,
MAURICE E. HARRISON,
As Amici Curiae.

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OCT 1936

No. 859

In the Supreme Court of the United States

OCTOBER TERM, 1935

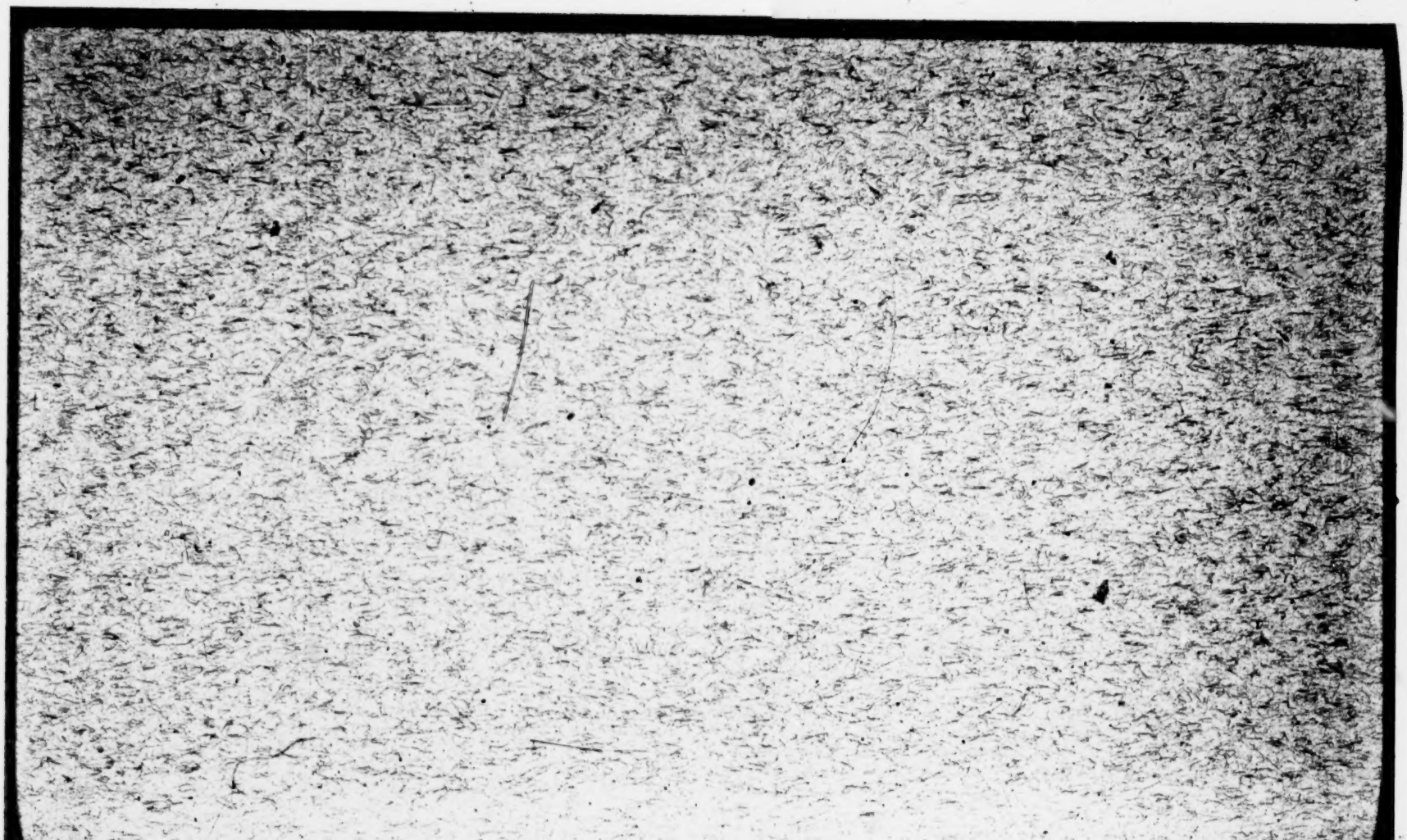
C. L. ASHTON ET AL., PETITIONERS,

v.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. ONE, RESPONDENT.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE FIFTH CIRCUIT.

BRIEF ON BEHALF OF THE RECONSTRUCTION FINANCE CORPORATION AS AMICUS CURIAE.



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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 859

C. L. ASHTON ET AL., PETITIONERS,

v.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. ONE, RESPONDENT.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE FIFTH CIRCUIT.

BRIEF ON BEHALF OF THE RECONSTRUCTION FINANCE CORPORATION AS AMICUS CURIAE.

STATEMENT.

On July 17, 1934, the respondent, a water improvement district organized under the laws of the State of Texas, instituted proceedings under Section 80 of the Bankruptcy Act to refinance its outstanding indebtedness (R. 146). An amended petition was filed on August 22, 1934 (R. 3) and on the same day the court entered an order approving the peti-

tion as filed in good faith in compliance with the provisions of the Act (R. 51). Petitioners thereafter moved to dismiss the amended petition and the proceedings (R. 103-113). On December 1, 1934 the District Judge rendered an opinion holding that the proceedings should be dismissed for want of jurisdiction (R. 113-124) and on December 11, 1934 he entered judgment accordingly (R. 124-125). Respondent appealed to the Circuit Court of Appeals which reversed the judgment of the District Court (R. 144-151). The petitioners then sought and were granted a writ of certiorari by this Court (R. 153).

One of the grounds upon which the petitioners rely in their attack upon the validity of the proceedings instituted pursuant to Section 80 of the Bankruptcy Act is the alleged inability of the Reconstruction Finance Corporation to lend the funds which are to be used for the purpose of refinancing the respondent's indebtedness. The Reconstruction Finance Corporation (hereinafter sometimes referred to as the "R. F. C.") is therefore directly interested in the determination of this case.

SUMMARY OF ARGUMENT.

It is submitted, *first*, that the case should be remanded without decision of the constitutional questions raised, both because of jurisdictional defects and because this is not an appropriate case for determining those important constitutional questions; *second*, that if this Court should decide to hear the appeal on the merits, the activities of the Reconstruction Finance Corporation referred to by the Petitioners are not a proper subject for consideration at this time; and *third*, that, in any event, such activities are a traditional and valid exercise of Federal powers.

Point I.

THE CASE SHOULD BE REMANDED WITHOUT DECISION OF THE CONSTITUTIONAL QUESTIONS RAISED, BOTH BECAUSE OF JURISDICTIONAL DEFECTS AND BECAUSE THIS IS NOT AN APPROPRIATE CASE FOR DETERMINING THOSE IMPORTANT QUESTIONS.

An examination of the record in connection with the preparation of this brief has revealed several matters which seem to make it impossible for this Court to pass upon the important questions of constitutional law which the petitioners have endeavored to raise. It is believed that the Court should be informed of all these matters at this time. For that reason they are briefly discussed below.[1]

A.

The Circuit Court of Appeals apparently had no jurisdiction to enter the judgment below because the appeal from the District Court was improperly taken.

Proceedings were instituted in the District Court under Section 80 of the Bankruptcy Act. Petitioners thereafter moved in those proceedings for a dismissal of the respondent's first amended petition (R. 103).[2] The motion was granted (R. 124) and the respondent then attempted to appeal *without the consent of the Circuit Court of Appeals.* The appeal, so taken, was a nullity.

It appears to be settled that an appeal from an order or judgment dismissing a bankruptcy proceeding and the pe-

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[1] We have called the attention of counsel for the petitioners and for the respondent to these matters and assume that they will consider these points in their briefs or in oral arguments.

[2] The record is silent as to the disposition of the original Petition.

tition instituting the same can be taken only under Section 24(b) of the Bankruptcy Act. *Meyer* v. *Kenmore Hotel Co.*, Nos. 375-376, October Term, 1935; *Valley* v. *Northern Fire Insurance Co.*, 254 U. S. 348; *Wilkerson* v. *Cooch*, (C. C. A.-9th) 78 Fed. (2d) 311; *Humphrey* v. *Bankers Mortgage Co.*, (C. C. A.-10th) 79 Fed. (2d) 345, 350; *Mason* v. *Hardy*, (C. C. A.-10th) 45 Fed. (2d) 587. Under that section the Circuit Court of Appeals has no jurisdiction in connection with such an appeal unless the appeal has been taken within thirty days and unless the Circuit Court of Appeals has *consented* to the taking of the appeal. The absence of such consent is not remedied by the fact that the permission of the District Court may have been secured. *Meyer* v. *Kenmore Hotel Co., supra; Deeley* v. *Cincinnati Publishing Co.* (C. C. A.-6th) 23 Fed. (2d) 920; *In re Federal Photo Engraving Corporation*, (C. C. A.-2d) 54 Fed. (2d) 628; *Wingert* v. *Smead*, (C. C. A.-4th) 70 Fed. (2d) 351; *Vitagraph* v. *St. Louis Prop. Corp.*, (C. C. A.-8th) 77 Fed. (2d) 590; *Wilkerson* v. *Cooch, supra; Humphrey* v. *Bankers Mortgage Co., supra. Clemons* v. *Liberty Corp.*, (C. C. A.-5th) 61 Fed. (2d) 448, and *Gulbransen Co.* v *Couch*, (C. C. A.-5th) 61 Fed. (2d) 933, appear to indicate a contrary result but can no longer be regarded as good law in view of the recent decision in *Meyer* v. *Kenmore Hotel Co., supra.* It should, in any event, be noted that the Circuit Court of Appeals in each of those cases expressly allowed the appeal after a provisional allowance by the District Judge (see Rule XXXIX of the Circuit Court of Appeals for the Fifth Circuit). The Circuit Court of Appeals has not at any time allowed the appeal in this case.

Since the petition for leave to appeal in this case was addressed to and granted by the District Court rather than the Circuit Court of Appeals (R. 130-131), the Circuit Court of Appeals never acquired jurisdiction to hear the appeal and the appeal should have been dismissed. This case should therefore be remanded to the Circuit Court of Ap-

peals for that purpose. *Shanferoke Coal & Supply Corp.* v. *Westchester Service Corp.*, 293 U. S. 449; *Stratton* v. *St. Louis South Western Railroad*, 282 U. S. 10; *Great Southern Fire Proof Hotel Company* v. *Jones*, 177 U. S. 449.

Even if the Circuit Court of Appeals had jurisdiction to hear the appeal it is believed that this case should be remanded for the further reasons set out in paragraphs "B," "C," and "D" *infra*.

B.

Several important facts necessary for a proper determination of the constitutional questions raised by the petitioners are not contained in the record.

A proper determination of the constitutional issues involves a consideration of a number of important facts which are not found in the record, including the following:

(a) The record does not disclose whether the petitioners are secured or unsecured creditors. Their exact status in that connection would seem to be of controlling importance in determining the applicability of *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, 588-589, upon which the petitioners place great reliance.

(b) The record does not furnish the terms and conditions of the bonds held by the petitioners. Hence only by conjecture may it be assumed that the petitioners' rights, as stated in those undisclosed documents, are being invaded by the institution of proceedings under Section 80 of the Bankruptcy Act.

(c) The record contains no copy of the Charter, By-laws or other rules or regulations, if any, under which the District is operating and fails to disclose the nature of the activities in which the District is engaged. Because of the absence of any factual data on this point it cannot be determined from the record whether the activities of

the District are proprietary or governmental. This point may be of controlling importance in determining whether the Bankruptcy Act may properly be availed of by the District. It should be noted that despite the absence of a factual basis therefor, the District Court assumed and petitioners assert that respondent's activities are governmental rather than proprietary, and that consequently Section 80 cannot be applied to the respondent's activities. On the other hand, the respondent has alleged in its second amended petition that it "was created as a promotion project for the colonization and development of lands" (R. 56).

(d) It is impossible to determine from the record whether this District was established "for co-operation with the United States under the Federal Reclamation Laws for the purpose of the construction of irrigation works, including drainage works, necessary to maintain the irrigability of the land for the purchase, extension, operation or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of District lands." (Texas Acts, 2d C. S., 1919, p. 65, part Sec. 1.) The record also fails to disclose whether the District has erected or maintains levies which may serve an essential function in flood control and other recognized national purposes. Obviously, the extent to which the Federal Government may legislate for the District may depend upon its status in those respects.

In view of these deficiencies, which were noted in part by the District Court,[3] the case should be remanded for de-

[3] See opinion of District Court (R. 114) where it is pointed out that "the Petition wholly fails to set forth the time of, manner of, and authority for, the organization of Petitioner as a Water Improvement District, which it claims to be, and fails to set forth clearly the date, manner of issue, number, amount and terms and conditions of the Bonds which Petitioner seeks to have readjusted * * *."

termination of these essential facts. *Liverpool, New York and Philadelphia Steamship Co.* v. *Commissioners of Emigration*, 113 U. S. 33; *Hendrick* v. *State of Maryland*, 235 U. S. 610; *Borden's Farm Products Co., Inc.*, v. *Baldwin*, 293 U. S. 194.

In *Liverpool, New York and Philadelphia Steamship Co.* v. *Commissioners of Emigration, supra*, this Court refused to pass upon the constitutionality of an Act of Congress, stating (p. 39):

> "If, on the other hand, we should assume the plaintiff's case to be within the terms of the statute, we should have to deal with it purely as a hypothesis, and pass upon the constitutionality of an Act of Congress as an abstract question. That is not the mode in which this Court is accustomed or willing to consider such questions. • • •
>
> "In the present case, the main and ultimate question is whether the defendant is legally liable to repay the moneys sued for, and, as incidental to that, whether the Act of Congress pleaded as a bar to the action is valid. *The solution of these questions depends upon facts not apparent upon the present record. That these may be made to appear there must be a new trial.*" (Italics added.)

In *Hendrick* v. *State of Maryland, supra*, this Court refused to pass on certain questions relating to the constitutionality of an automobile license tax because "as the capacity of the machine owned by plaintiff-in-error does not appear, he cannot complain of discrimination because fees are imposed according to engine power" (p. 624).

A recent reiteration of these views is found in *Borden's Farm Products Co., Inc.* v. *Baldwin, supra*, where this Court refused to pass upon the constitutionality of a statute during the preliminary stages of a proceeding

instituted to enjoin the enforcement thereof. In that case this Court stated (p. 212-213):

> "* * * that before the questions of constitutional law, both novel and of far reaching importance, were passed upon by this Court, 'the facts essential to their decision should be definitely found by the lower courts upon adequate evidence' * * *".

Here, too, it would seem to be inadvisable to pass upon the constitutional questions raised by petitioners at this preliminary stage of the proceeding while the record is silent as to facts which may well be determinative of the issues raised.

C.

The threatened loss to the petitioners is too hypothetical and speculative to raise a substantial Federal question.

It does not appear from the record that the petitioners are threatened with any loss in connection with the reorganization. The claim that they are threatened with loss by reason of proceedings under Section 80 is based on these highly speculative and hypothetical assumptions: (a) that the plan on hearing would not be modified by the court in a manner satisfactory to the petitioners; (b) that the District Judge, who has stated that the proceeding is "unfair and inequitable" (R. 124) would find, after the hearing and over petitioners' objections, that the plan "is fair, equitable, and for the best interests of the creditors, and does not discriminate unfairly in favor of any class of creditors";[4] and (c) that the plan as finally approved will operate to the injury and detriment of the petitioners herein. The above assumptions are merely conjectural and furnish no substantive basis for the determination of the

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[4] Section 80(e) of the Bankruptcy Act.

constitutional questions involved in this appeal. In *Abrams et al.* v. *Van Schaick*, 293 U. S. 189, where a similar state of facts existed, this Court refused to pass upon the constitutionality of a New York statute providing for the reorganization of real estate mortgage investments because (p. 189):

> "Whether, if a plan of reorganization is promulgated by the Superintendent of Insurance it will be approved by the Court as required by the statute, or whether, if so approved, it will be opposed by certificate holders, or will receive the assent of the present appellants, or will operate to deprive them of any asserted constitutional right, are matters of conjecture.
>
> "The appeal is dismissed for the want of a substantial Federal question. *Liverpool, N. Y. & P. S. S. Co.* v. *Commissioners of Emigration*, 113 U. S. 33, 39, 28 L. Ed. 899, 901, 5 S. Ct. 352; *California* v. *San Pablo & T. R. Co.*, 149 U. S. 308, 314, 37 L. Ed. 747, 748, 13 S. Ct. 876; *Stearns* v. *Wood*, 236 U. S. 75, 78, 59 L. Ed. 475, 476, 35 S. Ct. 229; *Cincinnati* v. *Vester*, 281 U. S. 439, 449, 74 L. Ed. 950, 956, 50 S. Ct. 360."

Point II.

THE VALIDITY OF THE LOAN AUTHORIZATION BY THE R. F. C. TO CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. 1 AND THE STATUTE AUTHORIZING THE LOAN SHOULD NOT BE DETERMINED IN THIS CASE.

We submit that on the record in this case petitioners have no standing to attack the validity of the loan authorization by the R. F. C. to Cameron County Water Improvement District Number One and the statute authorizing the loan, that no substantial Federal question is raised with respect thereto and that no adequate record is presented for the determination of such questions.[5]

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[5] Neither the opinion of the District Judge (R. 113-124) nor that of the Circuit Court of Appeals (R. 141-150) found the questions of sufficient relevancy to pass upon them.

A.

Petitioners are not injured by the loan authorization by the R. F. C. or by the statute authorizing the loan.

This Court has held many times that no one will be heard to attack an Act of Congress unless he is injured by its application. See *Concordia Insurance Co.* v. *Illinois*, 292 U. S. 535, 547; *New Jersey* v. *Sargent*, 269 U. S. 328; *Heald* v. *District of Columbia*, 259 U. S. 114, 123; *Hendrick* v. *Maryland, supra.* Petitioners complain that the readjustment proceedings may result in a reduction of the face value of the obligations held by them, but they mistake the source of their alleged injury. The R. F. C. was designated by Congress [6] merely to supply funds to agricultural improvement districts that have determined independently that such funds will enable them more readily to refinance outstanding indebtednesses. These funds may become available whether the financial readjustment occurs by voluntary agreement between the creditors and the District or under existing provisions of law governing such readjustments. If the readjustment is voluntary, petitioners cannot be compelled to surrender their bonds; only in proceedings instituted under Section 80 of the Bankruptcy Act, which authorizes confirmation of a plan of readjustment on the approval of 66⅔% of the creditors affected and makes the plan binding on dissenters, can petitioners be compelled to surrender their obligations. Their alleged injury arises, therefore, by the action of their fellow-creditors under the provisions of the Bankruptcy Act, not by operation of the statute governing the R. F. C. This case is strikingly similar to *Railroad Co.* v. *Ellerman*, 105 U. S. 166, where this Court held that one who is injured by the competition of a corporation may not raise

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[6] The text of the statute will be found in the Appendix at p. 40.

the issue of *ultra vires* since the source of his injury is the competition, not the illegality of the corporation's act. This Court said (at p. 173):

> "The sole remaining question, then, is, whether Ellerman, as assignee of the city, has any legal interest which entitles him to enjoin the company from using its wharf as a public wharf beyond the limits of such use, as defined by that construction of the Joint Resolution. * * * If he asserts that the competition of the railroad company damages him, the answer is that it does not abridge or impair any such right. If he alleges that the railroad company is acting beyond the warrant of the law, the answer is that a violation of its charter does not of itself injuriously effect any of his rights. The company is not shown to owe him any duty which it has not performed."

B.

The questions raised by petitioners, with respect to the Reconstruction Finance Corporation, do not relate to the jurisdiction of the District Court.

The sole question below was the jurisdiction of the District Court to entertain the petition filed by the Water Improvement District. That the loan authorization from the Reconstruction Finance Corporation was not only subject to alteration, but also may be entirely rejected, appears readily from a consideration of Section 80.[7] *First*, it should be noted that Section 80 has broad provisions for the modification of the plan of readjustment originally filed. Under Section 80(c), the Bankruptcy Court must direct the District to give notice to creditors in order that a hearing may be had on the plan and any changes or modifications be considered.

[7] It should be noted that neither funds nor an agreement to procure funds are prerequisite for reorganization under Section 80 of the Bankruptcy Act.

Section 80(c) makes provision for changes and modifications in the plan at any stage in the proceedings and for the right of any creditor, who may previously have accepted the plan and been injured by the change or modification, to withdraw his acceptance. Nor may the Bankruptcy Court confirm the plan unless it is satisfied that it is fair and equitable and in the best interests of the creditors, and that the District is legally authorized to take all steps contemplated by the plan. *Second*, under Section 80(c), the Bankruptcy Court has power, with the approval of the District, to direct the rejection of executory contracts of the District, including, of course, the loan authorization by the R. F. C.

None of these steps has yet been taken. It would seem that the loan authorization by the R. F. C. could be completely altered or rejected without defeating the jurisdiction of the District Court. It follows, therefore, that the validity or invalidity of the loan authorization is not determinative of the jurisdiction of the Bankruptcy Court over the petition when filed. One effect of a contrary contention would be to require the tentative plan to contain all the essentials of the plan ultimately to be confirmed. Another effect would be to make meaningless many of the provisions of the Bankruptcy Act, such as the requirement that, prior to confirmation, the District Court must determine if the District is legally authorized to take all contemplated steps, and the authorization to the District to reject executory contracts. Still another effect would be to raise, at this time, questions for which Section 80 of the Bankruptcy Act has provided an orderly proceeding.

Petitioners will have ample opportunity to raise the questions here raised if the Bankruptcy Court confirms the plan. This Court will pass upon constitutional questions only when necessary to determine the direct and immediate rights of the parties. *Texas* v. *Interstate Commerce Commission*, 258 U. S. 158; *Interstate Busses Cor-*

poration v. *Holyoke Street Railway Company*, 273 U. S. 45. As this Court said in *Steamship Co.* v. *Emigration Comm.*, 113 U. S. 33, 39, it will not "anticipate a question of constitutional law in advance of the necessity of deciding it."

C.

In any event petitioners' alleged injury is at this time too remote and speculative to permit petitioners to press their constitutional objections.

Assuming without conceding that petitioners are able to trace their alleged injury to the loan authorization by the R. F. C., it is submitted that any such injury is at this time too remote and speculative to permit petitioners to press their objections.[8]

It has been demonstrated in subdivision B hereof that the plan of readjustment has numerous obstacles to survive before its confirmation. Petitioners' attitude towards the final plan can no more be ascertained at this time than can the final plan itself. This Court recently said:

> "At this stage appellant can show no more than apprehension that the definition which the administrative officer will lay down may be deficient. The Constitution cannot allay that fear." *Pac. Tel. & Tel. Co.* v. *Seattle*, 291 U. S. 300, 304.

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[8] It is well settled that no litigant will be heard to attack a statute when the injury said to result from its application may never occur. *New Jersey* v. *Sargent*, 269 U. S. 328; *Boston & Maine R. Co.* v. *Armbrug*, 285 U. S. 234, 240; *United States* v. *Los Angeles & Salt Lake R. Co.*, 273 U. S. 299, 313; *Alabama* v. *Arizona*, 291 U. S. 286, 292; *Yazoo & Mississippi Valley R. Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217, 219-220; *United States* v. *Illinois Central R. Co.*, 291 U. S. 457; *Delaware & Hudson Co.* v. *United States*, 266 U. S. 438, 440.

More recently it emphasized again, under closely analogous circumstances, that it will not hear an attack on a statute whose application is so remote and so speculative. In *Abrams* v. *Van Schaick, supra,* this Court dismissed the appeal for want of a substantial federal question, stating (at p. 189):

> "Whether, if a plan of reorganization is promulgated by the Superintendent of Insurance it will be approved by the Court as required by the statute, or whether, if so approved, it will be opposed by certificate holders, or will receive the assent of the present appellants, or will operate to deprive them of any asserted constitutional right, are matters of conjecture."

Here a plan of readjustment has been presented and appears, at this time, to have been approved by the requisite number of bondholders (R. 11). But these creditors may withdraw their approval if a modification adverse to them is made (Sec. 80(e)). The judge may refuse to confirm the plan. The petitioners may conclude that the plan is desirable in the light of changed economic conditions. It is evident that any attempt to distinguish the degrees of conjecture present in the *Abrams* case and in the case at bar must be illusory, and that the statute here under attack is as uncertain of adverse application to the petitioners as was the statute in the *Abrams* case.

D.

No adequate record for the determination of such questions is presented.

We submit that questions of constitutionality relating to important lending powers of the R. F. C. should not be passed upon by this Court until the Corporation has had an opportunity to present, upon proper hearing, sufficient facts to disclose the nature and effect of its operations. See

cases cited *supra*, page 7, and compare *Texas* v. *Interstate Commerce Commission*, *supra*, at pages 162 and 163, where this Court said:

> "Even if these allegations, in connection with other parts of the bill, could be regarded as presenting a concrete controversy turning on the validity of Title III, this would not enable us to entertain the suit. The bill makes it plain that the carriers and employees have put the Board's decisions into effect, and have adjusted their relations on that basis. There are none to whom the controversy would be of such immediate concern as to them; and, should it be resolved against the validity of Title III and the Board's action annulled, their interests would be directly and unavoidably affected. They are not parties to the bill; nor do any of those who are parties represent them."

Point III.

THE STATUTE AUTHORIZING THE LOAN PROPOSED TO BE MADE BY THE RECONSTRUCTION FINANCE CORPORATION IS A TRADITIONAL AND PROPER EXERCISE BY CONGRESS OF FEDERAL POWERS.

We have urged that this Court should not hear the appeal and that, in any event, petitioners cannot raise the question of the constitutionality of the loan proposed to be made by the Reconstruction Finance Corporation to Cameron County Water Improvement District or of the statute authorizing the loan. If, however, this Court should be of the opinion that such a question has been raised, we submit that the functions of the Reconstruction Finance Corporation here involved are undertaken in an appropriate and traditional exercise of powers conferred upon the Federal Government by the Constitution.

A.

Fiscal Powers.

The Constitution confers upon Congress a series of powers—to borrow money on the credit of the United States, to lay and collect taxes, to coin money and regulate the value thereof—which in the aggregate are frequently referred to as the "fiscal" power of Congress. Their source and nature have recently been well defined in *Norman* v. *Baltimore & Ohio R. R. Co.*, 294 U. S. 240, where this Court said (at p. 303):

> "The broad and comprehensive national authority over the subjects of revenue, finance, and currency is derived from the aggregate of the powers granted to the Congress, embracing the powers to lay and collect taxes, to borrow money, to regulate commerce with foreign nations and among the several States, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures, and the added express power 'to make all laws which shall be necessary and proper for carrying into execution' the other enumerated powers."

Under these powers, it was decided in the early cases of *McCulloch* v. *Maryland*, 4 Wheat. 316, and *Osborn* v. *Bank*, 9 Wheat. 738, that Congress could create a Federal banking corporation with broad credit as well as currency powers.[9] Throughout the subsequent years Congress has

[9] It is significant that the First and Second Banks of the United States engaged in a wide variety of lending functions. These included ordinary commercial loans to individuals, operations in foreign exchange, acquisition of real estate mortgages and loans to State banks. See *Holdsworth and Dewey*, The First and Second Banks of the United States, Sen. Doc. No. 571, 61st Cong., 2d Sess., *passim*, and the balance sheets reprinted at pp. 308-311.

continually recognized its obligation to provide a national system of financial institutions for handling the credit and exchange requirements of agriculture, industry and commerce. Familiar examples are found in the establishment of national banks (c. 58, 12 Stat. 665; c. 106, 13 Stat. 99), the Federal Reserve System (c. 6, 38 Stat. 251), and the Federal Farm Loan System (c. 245, 39 Stat. 360). In *Farmers' National Bank* v. *Dearing,* 91 U. S. 29, 33, the national banks were declared "instruments designed to be used to aid the Government in the administration of an important branch of the public service." This statement was made more than 60 years ago. Today currency has largely been supplanted by credit instruments serving as a medium of exchange,[10] and the fiscal powers of Congress are accordingly much more intimately related to the financial structure of loans and deposits. Today, too, Congress could not successfully exercise its powers to tax and to borrow in a paralyzed financial community.

It has also been long held by this Court that Congress, once having established these valid fiscal agencies, has the correlative power to take such measures as are necessary to protect and preserve them. *McCulloch* v. *Maryland, supra,* p. 424; *Farmers' National Bank* v. *Dearing, supra,* p. 34; *First National Bank* v. *Union Trust Company,* 244 U. S. 416, and *Westfall* v. *United States,* 274 U. S. 256.

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[10] See statement by Marriner S. Eccles, Governor of the Federal Reserve Board, in Hearings on Banking Bill of 1935, 74th Congress, 1st Session, page 213, where it was estimated instruments of credit were used in over 90%, by dollar volume, of all exchange transactions. The figure was estimated at 94.1% in the report of the Comptroller of the Currency, 1919, Vol. 2, page 36, and as 80 to 85% in "The Use of Credit Investments in Payments in the United States", Senate Document No. 399, 61st Congress, 2d Session, p. 201 (1909).

In the exercise of these powers, Congress, in January 1932, created the Reconstruction Finance Corporation (c. 8, 47 Stat. 5, U. S. C. Title 15, sec. 601 et seq.) as a corporate banking institution of the United States. As the declarations in the Act itself,[11] in the Senate Report on the Act,[12] in the House Committee hearings,[13] and before Congress by the sponsors of the Act,[14] uniformly reveal, the Corporation was intended to give temporary financial aid to distressed agricultural, financial and commercial institutions and railroads, in an effort to stabilize abnormal financial conditions, to strengthen the national credit and currency system and to assist fiscal institutions, including those created by Congress.[15] Many leading fiscal and finan-

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[11] Sections 2 and 5 of the Reconstruction Finance Corporation Act, and as amended, 15 U. S. C., Secs. 602, 605.

[12] Senate Report No. 33, 72d Cong., 1st Sess., p. 2.

[13] Hearings before House Committee on Banking and Currency, 72d Cong., 1st Sess., on H. R. 5060 and 5116, pp. 10-15.

[14] Congressional Record, 72d Cong., 1st Sess., pp. 1418, 1419.

[15] It should be noted that the R. F. C. Act provides in Section 12 that

> "when designated for that purpose by the Secretary of the Treasury the Corporation shall be a depositary of public moneys * * * and it may also be employed as a financial agent of the government; and it shall perform all such reasonable duties, as depositary of public money and financial agent of the government, as may be required of it."

These provisions are strikingly similar to provisions in *Smith* v. *Kansas City Title Company*, 255 U. S. 180, where the court sustained the constitutionality of Federal Land Banks on the ground that they were appropriate agencies

cial authorities testified to the need of such supplemental and temporary credit facilities.[16]

As stated by Mr. Justice Cardozo in *Baltimore National Bank* v. *Maryland State Taxing Commission*, No. 283, October Term, 1935:

> " the purpose that it [Reconstruction Finance Corporation] has aimed to serve is not profit to the government though profit may at times result from one or more of its activities. The purpose to be served is the rehabilitation of finance in industry and commerce threatened with prostration as the result of the great depression."

The specific power of the R. F. C. pursuant to which it authorized a loan to Cameron County Water Improvement District No. One was conferred by the Emergency Farm Mortgage Act of 1933. The need for such an enactment had received detailed consideration by Congress since 1928

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to aid in the execution of the fiscal powers of the federal government and said (p. 211):

> "We therefore conclude that the creation of these banks, and the grant of authority to them to act for the government as depositaries of public moneys and purchasers of government bonds, brings them within the creative power of Congress, *although they may be intended, in connection with other privileges and duties, to facilitate the making of loans upon farm security at low rates of interest.* This does not destroy the validity of these enactments any more than the general banking powers destroy the authority of Congress to create the United States bank, or the authority given to national banks to carry on additional activities destroy the authority of Congress to create those institutions." (Italics supplied.)

[16] Those who testified included Eugene Meyer, then Governor of the Federal Reserve Board; Ogden L. Mills, then Under-Secretary of the Treasury; George Harrison, then

when such a bill was first introduced.[17] It is but one phase of the general problem of agricultural credit. That it was so considered by Congress is revealed in the extensive hearings [18] and numerous reports [19] on the various bills introduced between 1928 and 1932. The hearings and reports evidence a widespread concern with the heavy and fre-

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Governor of the Federal Reserve Bank of New York; Phillip A. Benson, Treasurer of the Dime Savings Bank of Brooklyn, New York, and Chairman of the Investment Committee of the National Association of Savings Banks; Frederick H. Ecker, President of the Metropolitan Life Insurance Company of New York; Morgan B. Brainard, President of the Aetna Life Insurance Company; Henry Bruere, President of the Bowery Savings Bank of New York; Melvin A. Traylor, President of the First National Bank of Chicago, Illinois; Wilson W. Mills, Chairman of the Board, Peoples Wayne County Bank, Detroit, Michigan; J. C. Traphagen, representing the Bank of New York. See Hearings before House Committee on Banking and Currency (72d Cong., 1st Sess.) on H. R. 5060 and 5116.

[17] Numerous bills were introduced in the 70th Congress and after. See H. R. 14116, H. R. 17333 and S. 4689 of the 70th Congress; H. R. 1410 and S. 4123 of the 71st Congress; H. R. 4650 and S. 1856 of the 72d Congress; H. R. 3835, H. R. 4795 and S. 1110 of the 73d Congress.

[18] See Hearings Before Committee on Irrigation and Reclamation, House of Representatives, on H. R. 14116, 70th Congress, 2d Session; on S. 4123, 71st Congress, 3d Session and on H. R. 4650, 72d Congress, 1st Session. See also Hearings Before Committee on Rules, House of Representatives, on S. 4123, 71st Congress, 3d Session.

[19] See Senate Report No. 769, 71st Congress, 2d Session; House of Representatives Report No. 2169, 71st Congress, 3d Session; House of Representatives Report No. 37, 72d Congress, 1st Session and Senate Report No. 16, 73d Congress, 1st Session.

quently unsound tax and debt burdens of farming communities,[20] with the abnormally low income of farming communities,[21] and with the necessity of integrating contemplated credit relief with existing facilities for agricultural credit.[22]

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[20] In the transcript of the Hearings Before a Subcommittee of the Senate Committee on the Judiciary, on S. 1868 and H. R. 5950, 73d Congress, 2d Session, the following statement appears in a letter signed by J. H. Guill, Deputy Land Bank Commissioner:

> "On the other hand many districts are overindebted, in view of the character and normal earning power of the land and the state of the district's development. The cause of default in many such cases cannot be charged to the recent low prices of farm products. In such districts, and where maintenance is neglected or no definite maintenance policy established, there can be no sound basis for long term loans until refinancing has been carried out and adequate maintenance provided for."

and the following statement appears in a letter signed by Douglas Orr, an official of the Home Owners' Loan Corporation:

> "However, in many drainage districts and other taxing districts, the default of the taxing authority upon its obligations has led to such high assessment rates, that not infrequently the unpaid taxes run the amount of the liens against the property up so high that the Corporation cannot relieve the owner since the liens existing amount to more than 80% of the appraised value and the owner is thus made ineligible under the act."

[21] See *infra* notes 25 and 26.

[22] See, for example, Senate Report No. 769, 71st Cong., 2d Sess., pp. 3-4; Hearings Before Committee on Rules, House of Representatives, on S. 4123, 71st Cong., 3d Sess., pp. 84-89.

Thus the statute under consideration was finally enacted as a part of the Emergency Farm Mortgage Act of 1933 which dealt with necessary modifications and revisions of existing governmental agricultural banks.

These institutions have as a common goal the establishment of adequate agricultural credit and adopt substantially identical means of accomplishing this end. The most important of these have been considered by this Court on a number of occasions. First, in *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, this Court upheld the power of Congress to establish the Federal Land Banks. Thereafter, in *Federal Land Bank* v. *Gaines*, 290 U. S. 247, the Court said (p. 250):

> "The Federal Farm Loan Act was adopted in response to a national demand that the Federal government should set up a rural credit system by which credit, not adequately provided by commercial banks, should be extended to those engaged in agriculture, upon the security of farm mortgages."

Again (at p. 254) it said that the Federal Land Banks and National Farm Loan Associations were:

> "* * * in a broad and general sense, public agencies or instrumentalities to carry out a policy of the government—the extension of credit to those engaged in agriculture to be availed of in the furtherance of agricultural undertakings * * *."

Finally, in *Federal Land Bank* v. *Priddy*, 295 U. S. 229, 231, this Court said that Federal Land Banks were "engaged in the performance of an important governmental function". The extension of agricultural credit by the R. F. C. here involved, serving the same ends by the same means, can be no less governmental. It should further be noted that,

aside from the extension of agricultural credit, many of these banks have other important Federal functions.[23]

As has been shown, *supra*, p. 17, Congress, once having established such valid fiscal agents, has the correlative power to take reasonable measures that are, at least in part, directed to their protection and preservation. These agricultural credit agencies have, of course, advanced large sums on the security of farm mortgages.[24] In the late twenties, with an abrupt drop in farm income,[25] there

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[23] Particularly notable is their authority to have federal funds on deposit and to act as fiscal agents of the United States (see Federal Farm Loan Act, Sec. 6), and their authority to invest in federal obligations. See Federal Farm Loan Act, Sec. 13; c. 245, Sec. 22, 39 Stat. 378; c. 252; Title III, § 309, 42 Stat. 1477. These powers were considered of primary importance in *Smith* v. *Kansas City Title Co.*, *supra*, which, as we have seen, sustained the constitutionality of Federal land banks.

[24] In 1928 Federal land banks and joint stock land banks together held in excess of $1,500,000,000 farm mortgage loans and this figure has increased steadily until in 1935 it amounted to approximately $2,250,000,000. This amounts to approximately 18% of the total farm mortgage debt. Year Book, United States Department of Agriculture 1935, p. 695; Federal Reserve Bulletin, Vol. 12, No. 8, p. 520; The Agricultural Situation, Vol. 19, No. 9, p. 18; The Farm Debt Problem, House Document No. 9, 73d Congress, 1st Session, p. 32.

[25] From an estimate of approximately $17,000,000,000 in 1919, farm income dropped to an average of around $12,000,000,000 between 1923 and 1929, and to approximately $9,500,000,000 in 1930, to approximately $7,000,000,000 in 1931 and to approximately $5,000,000,000 in 1932. Farm price indices, based on 100 par in 1909 through 1914, dropped from 156 in 1925 to 65 in 1932. Year Book, op. cit. *supra*, Note 24, p. 673; Crops and Mortgages, Vol. 12, No. 7, p. 270.

followed a correspondingly abrupt rise in loan delinquencies.[26] It was inevitable that this situation should have caused a severe strain on the Government's agricultural credit agencies, threatening to impair the exercise of their Federal functions.[27] Water charges and taxes, which are superior to the mortgage of farm loans,[28] and heavy unsound tax burdens, contributed materially to these difficulties. Financial aid to enable these districts to readjust disproportionate tax burdens thus contributes to relieving the strain on these agricultural banks.[29] Since these banks are exercising proper Federal functions, the functions of the R. F. C. in extending aid that protects them are no less proper.

That the measures taken are reasonable and appropriate becomes clear when it is noted that the readjustments involve no compulsion whatever by the R. F. C. upon districts or their creditors; the R. F. C. merely holds itself ready to advance funds when they will facilitate readjustments that will be consummated voluntarily between districts and

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[26] Loan delinquencies on Federal land bank loans rose from 4.8% in 1925 to 53.2% in 1932. Crops and Mortgages, Vol. 12, No. 7, p. 270.

[27] It should be noted that the price at which the bonds of these institutions could be sold fell to a point where they could not relend at a rate high enough to meet operating expenses. The Farm Debt Problem, House Document No. 9, 73d Cong., 1st Sess., p. 32.

[28] See Hearings before a Subcommittee of the Senate Committee of the Judiciary, on S. 1868 and H. R. 5950, 73d Congress, 2d Session, p. 80.

[29] It has been estimated that the outstanding bonded indebtedness of irrigation and drainage districts is approximately $865,000,000 and that the amount of first mortgages affected in those areas is approximately $1,100,000,000. Hearings, op. cit, *supra*, Note 28, p. 71.

their creditors or pursuant to existing law. Furthermore, in view of the disproportionate tax and water charges in many areas, creditors of the community should welcome a readjustment which will insure partial payment according to the value of their holdings, instead of almost certain default and loss.[30] The resulting reduction in the fixed charges borne by the farm mortgagor is permanent and the improvement does not depend upon the annual Congressional largesse which would be necessary were a more direct form of relief adopted. For a similar credit facility extended by the Federal government see *U. S.* v. *Guaranty Trust Co.*, 280 U. S. 483.

It is immaterial that the loan here authorized is to be made neither to the Federal farm credit agencies nor to the indebted farmer. That the method adopted instead permits a water improvement district to be the borrower is of no significance. It is well recognized that the Constitution does not confine the functions of fiscal agencies within mechanical and rigid boundaries. In *First National Bank* v. *Union Trust Company, supra*, this Court held that Congress could authorize national banks to act as trustees, executors and administrators in States in which State banks were so empowered, in order that national banks might not be prejudiced in their functions. In reviewing earlier decisions, this Court recognized (p. 420) that:

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[30] It is significant that the second amended petition in this case shows that $700,000 of the $800,000 bonds outstanding had been deposited for payment at 49% (R. 84). For the illusory remedy of a security holder in the event of such default see Fordham, *Methods of Enforcing Satisfaction of Obligations of Public Corporations*, 33 Columbia Law Review 28; 45 Yale Law Journal 702; 33 Columbia Law Review 1051; *City of Asbury* v. *Christmas*, 78 Fed. (2d) 1003 (C. C. A. 3rd).

> "* * * although a particular character of business might not be, when isolatedly considered, within the implied power of Congress, if such business was appropriate or relevant to the banking business, the implied power was to be tested by the right to create the bank and the authority to attach to it that which was relevant in the judgment of Congress to make the business of the bank successful",

and reversed the lower court decision:

> "* * * Because the opinion of the Court instead of testing the existence of the implied power to grant the particular functions in question by considering the bank as created by Congress as an entity with all the functions and attributes conferred upon it, rested the determination as to such power upon a separation of the particular functions from the other attributes and functions of the bank and ascertained the existence of the implied authority to confer them by considering them as segregated, that is, by disregarding their relation to the bank as component parts of its operations, a doctrine which, as we have seen, was in the most express terms held to be unsound in both of the cases."

In *Smith* v. *Kansas Title Co., supra,* these thoughts were further developed when the Court said (pp. 210-211):

> "That Congress has seen fit, in making these banks fiscal agencies and depositaries of public moneys, to grant to them banking powers of a limited character, in nowise detracts from the authority of Congress to use them for the governmental purposes named, if it sees fit to do so.
>
> "We therefore conclude that the creation of these banks, and the grant of authority to them to act for the government as depositaries of public moneys and purchasers of government bonds, brings them within the creative power of Congress, although they may be in-

tended, in connection with other privileges and duties, to facilitate the making of loans upon farm security at low rates of interest. This does not destroy the validity of these enactments any more than the general banking powers destroyed the authority of Congress to create the United States Bank, or the authority given to national banks to carry on additional activities destroyed the authority of Congress to create those institutions."

Most recently this doctrine was alluded to in *Baltimore National Bank* v. *Maryland State Taxing Commission*, No. 283, October Term, 1935, where this Court said:

> "We assume, though without deciding even by indirection, that within *McCulloch* v. *Maryland*, 4 Wheat. 316, a corporation so conceived and operated is an instrumentality of the government without distinction in that regard between one activity and another."

These authorities should be considered together with another pertinent line of decisions culminating in *United States* v. *California*, No. 33, October Term, 1935. There, under the commerce clause, this Court permitted Federal regulation of a State owned railroad saying that "The State can no more deny the power if its exercise has been authorized by Congress than can an individual." It would seem to follow from these cases that properly constituted Federal credit agencies have not exceeded traditional and proper Federal powers when they have acquired the obligations of State-regulated utilities, municipalities and other political subdivisions and of the States themselves. It is illuminating that the First and Second Banks of the United States *had express power to lend to States*.[31]

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[31] See *Holdsworth & Dewey*, First and Second Banks of the United States, Senate Document No. 571, 61st Cong., 2d Sess., pp. 130, 275.

The terms and conditions of the loan, provided in Section 36 of the Emergency Farm Mortgage Act of 1933, and in greater detail in the loan authorization of the R. F. C. (R. 61), limited as they are to the life of the loan, are merely the reasonable safeguards of a creditor seeking to assure repayment, and are incidental to the purposes of the loan. We have demonstrated that a loan, such as is here involved, falls within the traditional range of Federal powers. It must follow that conditions and terms so limited as to be incidental to the valid function and to the obligation to repay are likewise within the scope of legitimate Federal powers. Furthermore, though incidental, these conditions are essential to make the obligation enforceable and to preserve a valid Federal power from nullification. Then, too, Federal funds, like other property of the United States, are "held in trust for the people of the whole country," *United States* v. *Beebe*, 127 U. S. 338, and the Federal Government is clothed with the power to protect its property from harm and waste. *Ashwander* v. *Tennessee Valley Authority*, Nos. 403-404, October Term, 1935; *Pan American Co.* v. *U. S.*, 273 U. S. 456, 501; *U. S.* v. *Munday* 222 U. S. 175, 181; *Kansas* v. *Colorado*, 206 U. S. 46, 92; *Camfield* v. *U. S.*, 167 U. S. 518; *U. S.* v. *Trinidad Coal Company*, 137 U. S. 160; *U. S.* v. *Gratiot*, 14 Pet. 526; *U. S.* v. *Hanson*, 167 Fed. 881; *U. S.* v. *Shryock*, 162 Fed. 790, 793. Without such conditions the Reconstruction Finance Corporation may not be able to dispose of these obligations, as improved credit conditions make it desirable that it withdraw from this field, since private investors customarily insist upon credit precautions of a like nature. Likewise, if the loan be valid, conditions necessary to its security may be imposed even though the borrower be a political subdivision of the State. Compare *U. S.* v. *California, supra.* A parallel is found in *Ruddy* v. *Rossi*, 248 U. S. 104, where this Court held that

Congress had the power to exempt from seizure by creditors property acquired from the Government by citizens, saying:

> "they may be leased, sold, or given away upon such terms and conditions as the public interests require,"

and in *U. S.* v. *Gratiot*, Fed. Cas. No. 15, 249, where the fixing of the resale price of products to be sold by a lessee of governmental mineral lands was upheld. Mr. Justice McLean (sitting as a Circuit Judge) said:

> "* * * The limitation imposed on the price of the manufactured article is a very proper regulation in the lease; as it prevents monopolies, and other consequences injurious to the public, by a combination of the lessees. The argument is not sustainable that if the United States may do this, they may engage in any other traffic, within a state, and regulate prices at pleasure. This consequence does by no means follow.
>
> "The government has a right * * * to stipulate with the lessee, as one of the conditions of his lease, that he shall sell the ore he digs, or the lead he manufactures, at a fixed price. I can see no possible objection to such a regulation. It is one that any individual, on leasing a farm, may make * * * * * * it is clear to my mind, that such a regulation in no respect interferes with the sovereignty of the state, or any local law which the state has power to pass."

That the terms and conditions, which petitioners contend would give to the R. F. C. "control of the district", are plainly no broader than is appropriate to such ends, and are subordinate to the purposes of the loan, is evident upon their examination. Addressing ourselves only to those conditions upon which petitioners have felt justified in relying, we note that they fall principally into three groups. One group deals with incidental administrative matters facilitating proper disbursement, such as Condition No. 1 of the loan authorization, which provides that all loans shall be dis-

bursed within such time as may be fixed by the R. F. C., and Condition No. 5-b, which provides that the R. F. C. may advance the funds directly to bondholders if it should be necessary that the old bonds of consenting holders be kept alive for a period of time in order to maintain a parity of rights. The second group includes provisions designed merely to give reasonable assurance of the repayment of the loan. An example is Condition 8-a of the loan authorization which provides that the District will pay to the Corporation the amount by which its collections exceed its current obligations, and portions of Condition 9 which require proper readjustment of benefits, collections of taxes and exclusion of unproductive lands (from which water charges may not be collected). The third group consists of such reasonable safeguards as unsecured creditors may properly take to protect themselves against dissipation of assets or uneconomical administration that will make ultimate repayment impossible. To this class belong such provisions as portions of Condition 8-a where the district agrees not to issue any other similar bonds, except with the consent of the Corporation, and, in order to assure economical administration and debt service over the long life of the loan, to reduce its annual taxes, *insofar as it lawfully may*, by an amount proportional to the reduction in necessary debt service, Condition 8-b whereby the district will not incur any indebtedness for which it can not pay cash from normal revenue, Condition 8-c whereby the district will permit the R. F. C. to have a representative present at meetings of the governing body, and Condition 8-j whereby the district will permit the Corporation access to its records, reports and files.

Nothing in *U. S.* v. *Butler*, No. 401, October Term, 1935, suggests that such incidental conditions are invalid, especially in a case where no claim is, or can be, made that there

is coercion in fact or law to induce the borrowing of monies from the R. F. C. The Court did not condemn all governmental contracts; its emphasis is important here:

> "• • • appropriations and expenditures under contracts for proper governmental purposes can not justify contracts which are not within the Federal power."

The Court condemned any attempt by contract or otherwise to impose a system of regulation that was beyond the federal power, and an illustration given by it points clearly to the difference between that case and this. The Court said:

> "• • • an appropriation to an educational institution which by its terms is to become available only if the beneficiary enters into a contract to teach doctrines subversive to the Constitution is clearly bad."

In contrast the terms and conditions here are incidental in purpose and incidental to a constitutional power to extend agricultural credit, are of the sort properly required by a creditor, and are essential to prevent waste and to preserve a traditional federal power from nullification.[32]

B.

General Welfare.

The statute and loan authorization here under consideration draw Constitutional support from another source as well. This Court in *United States* v. *Butler, supra,* said that:

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[32] If this Court should determine that any of the terms or conditions are invalid, it is submitted that the remainder of the contract, if it may still be given substantial effect, should be sustained. Invalid terms or conditions do not of themselves invalidate entire contracts, 5 *Williston on Contracts,* 1922, §§ 1779-1782, and the intent of Congress, to extend credit relief in an abnormal situation, withstands an incidental alteration of conditions.

> "The Congress is expressly empowered to lay taxes to provide for the general welfare * * * and Congress consequently has substantive power to tax and to appropriate, limited only by the requirement that it shall be exercised to provide for the general welfare of the United States * * *. * * * the powers of taxation and appropriation extend only to matters of national, as distinguished from local welfare."

It will not be denied that the agricultural and credit problems of the country have a profound effect upon the national welfare. True, actual agricultural activity within the states and regulation thereof may be matters of local concern, *United States* v. *Butler, supra; Kansas* v. *Colorado*, 206 U. S. 46, 87. But, in contrast, appropriate agricultural credit measures of the federal government, if national in scope and purpose, would seem to provide for the general welfare. The agricultural credit structure is an inseparable part of the banking system of the nation. Its intimate relationship to national welfare has already been demonstrated. See *supra*, pp. 16 to 25.

That the national welfare is served by the measure under consideration appears also in another way. The District to which this loan is proposed to be made is a "water improvement district." This Court has taken note of the public importance of irrigating arid lands. *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 161, 164; cf. *United States* v. *Hanson*, 167 Fed. 881 (C. C. A.-8th). Widespread conservation, through reclamation of uninhabitable areas, and the protection of highly developed agricultural areas serves important public purposes.[33] Here Congress seeks merely to make loans under the general welfare power, to

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[33] As was said by Senator McNary in submitting the Committee Report, on S. 4123, 71st Congress, 2d Session, at p. 3:

> "It is a plan to save highly productive lands that are already under successful cultivation."

aid in attacking conditions which might otherwise result in a widespread waste of the natural resources of the nation. It may well be doubted that the federal government could undertake to regulate, absorb or compel the reorganization of an irrigation district created under state law. See *United States* v. *Butler, supra; Hopkins* v. *Cleary, supra.* It may well be that it could not take the place of the State in the organization and regulation of such a district which had no contact with a recognized federal interest. But such a case is not before the Court. The statute under consideration is designed to be generally available throughout the country,[34] and to offer merely a credit facility for public purposes,[35] of which prospective borrowers may voluntarily

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[34] As was said by Senator McNary in the Report, op. cit. *supra*, Note 33, at pp. 3-4:

> "The benefits of this bill, if it becomes a law, would extend to the residents of 35 states having, as shown by the 1920 census, an aggregate of 65,634,743 acres in drainage districts now operating, and in the drainage enterprises of which districts there was invested at the time the 1920 census was taken a total of $380,040,043. Since that census both the acreage and the capital invested have been increased possibly by as much as 10%. * * * The demand for this legislation is from 5,000,000 of the farm population, which, according to the 1920 census, live within these drainage districts."

[35] As was said by Senator McNary in the Report, op. cit. *supra*, Note 33, at p. 2:

> "It is not a plan to extend aid directly to individual farmers in their individual capacities, but it is a plan to aid farmers in their collective capacities where they have organized drainage districts to install and maintain public drainage works as outlets for the private drainage works of individual farmers. It is the public works, the collective or community works, authorized by and operated under authority of the law, that ought to be relieved by this bill."

and independently avail themselves. That the terms and conditions provided in the statute and the loan authorization are incidental in purpose and proper credit precautions has been shown above, pages 28 to 31.

A striking parallel may be observed in a passage from Story, *Commentarials On The Constitution*, 4th Ed., whose interpretation of the welfare clause this Court approved in *United States* v. *Butler, supra*. He recognized the requirement that appropriations must be for national welfare and said in Sec. 991:

> "In regard to the practice of the government, it has been entirely in conformity to the principles here laid down * * *. In some cases, not silently, but upon discussion, Congress has gone to the length of making appropriations to aid destitute areas and *cities laboring under severe calamities* * * *." (Italics supplied.)[36]

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[36] Attention should be called to evils—national in importance—which the sponsors of legislation similar to that finally enacted hoped to avoid:

> "These 5,000,000 are for the most part small farmers, each having his all invested in his farm, which is also his home, each struggling under a load of debt and taxes, fighting for life, health and home.
>
> "Statistics, collected and compiled from official sources within the present year, show that several thousands of farmers have been sold out for drainage taxes while other thousands are facing the same fate. Dispossessed, these farmers are and will be forced into the ranks of the unemployed. To enact this bill into law not only would be to give much needed and substantial relief to worthy farmers engaged in the fundamental industry of agriculture, but also would be to prevent in a considerable measure further increase in the number of unemployed." Senate Report No. 769, 71st Congress, 2d Session, p. 4.

C.

State Rights Have Not Been Invaded.

From the foregoing it appears that petitioners' contention of a violation of the Tenth Amendment is without substance. Specifically, we have endeavored to demonstrate that the statute under consideration and the loan authorization to Cameron County Water Improvement District fall within proper and traditional Federal powers, and that the terms and conditions imposed by the statute and by the loan authorization are not only incidental in purpose but essential to the proper exercise of these Federal powers. That the Tenth Amendment does not forbid a proper exercise of Federal powers was recently reaffirmed by this Court, in regard to the property clause of Article IV of the Constitution. It was held in *Ashwander* v. *Tennessee Valley Authority*, Nos. 403-404, October Term, 1935:

> "To the extent that the power of disposition is thus expressly conferred, it is manifest that the Tenth Amendment is not applicable. And the Ninth Amendment (which petitioner also invoked) in insuring the maintenance of the rights retained by the people does not withdraw the rights which are expressly granted to the Federal government. The question is as to the scope of the grant and whether there are inherent limitations which render invalid the disposition of the property with which we are now concerned."

United States v. *Butler*, *supra*, is therefore not in point because as there stated:

> "* * * contracts for the reduction of acreage and the control of production are outside the range of that [Federal] power."

Furthermore, the statute under consideration is merely the offer of a privilege, which the Federal government may

properly extend. The statute provides that loans "shall be made for the purpose of *enabling* a borrower to reduce and refinance its outstanding indebtedness * * *."[37] Conditions of the loan, as discussed above, are frequently limited, when mentioned in the statute, by such phrases as "insofar as it [the borrower] may lawfully do so." There is no compulsion in law or fact upon a prospective borrower to apply to the R. F. C. Nor is there any compulsion upon the creditors of prospective borrowers. Under the law the R. F. C. was merely designated to supply funds upon proper terms to agricultural improvement districts which have determined independently that such funds will enable them more readily to refinance outstanding indebtedness, whether by voluntary agreement between creditors and the district or under existing provisions of law governing readjustments of such districts.

The mere extension of a privilege does not invade the rights of States. See *Federal Compress Co.* v. *McLean*, 291 U. S. 17, 23:

> "But the appellant, in the enjoyment of the *privilege* [conferred by the Federal government], is engaged in its own behalf, not the government's, in the conduct of a private business for profit." (Italics supplied.)

In *Massachusetts* v. *Mellon*, 262 U. S. 447, the link between the exercise of Federal powers and the conditions imposed to the grant of funds was not as clear or as direct as here. The controversy involved annual appropriations to states which would accept certain conditions designed to reduce maternal and infant mortality and to protect the health of mothers and infants. This Court said (p. 482):

> "What, then, is the nature of the right of the State here asserted, and how is it affected by this statute? Reduced to its simplest terms, it is alleged that the statute constitutes an attempt to legislate outside the

[37] Italics added.

powers granted to Congress by the Constitution, and within the field of local powers exclusively reserved to the States. Nothing is added to the force or effect of this assertion by the further incidental allegations that the ulterior purpose of Congress thereby was to induce the States to yield a portion of their sovereign rights; that the burden of the appropriations falls unequally upon the several States; and that there is imposed upon the States an illegal and unconstitutional option either to yield to the Federal Government a part of their reserved rights, or lose their share of the moneys appropriated. But what burden is imposed upon the States, unequally or otherwise? Certainly there is none, unless it be the burden of taxation, and that falls upon their inhabitants, who are within the taxing power of Congress as well as that of the States where they reside. Nor does the statute require the States to do or to yield anything. If Congress enacted it with the ulterior purpose of tempting them to yield, that purpose may be effectively frustrated by the simple expedient of not yielding."

Finally, nothing in *Hopkins' Federal Savings and Loan Association* v. *Cleary,* Nos. 55-57, October Term, 1935, suggests a different result. In contrast to the "protest of Wisconsin" emphasized in that case we have here the following Act of the Texas Legislature:

> "Water Improvement Districts may borrow money from the Reconstruction Finance Corporation created by the laws enacted by the Congress of the United States for any purpose incident to its powers and functions and any purpose provided by law, and may evidence such debts by contract, agreements, notes, bonds or warrants payable within any term of years not to exceed forty years, and to bear interest at not to exceed the rate of six per centum per annum." (Acts of 1933, ch. 131, Sec. 5.)

The statute which is assailed as invading the rights of States is one designed to further traditional Federal pur-

poses. It is one whose provisions have expressly been approved by the legislature of the State whose sovereign rights are said to have been invaded. It is, in our opinion, abundantly plain that the Tenth Amendment can have no application.

CONCLUSION.

It is submitted that this is not an appropriate case for determining the important constitutional questions which the petitioners endeavor to raise and that the case should be remanded without consideration of the constitutional questions raised. If this Court should decide to hear the case on the merits, it is further submitted that the activities of the R. F. C., referred to by the petitioners, are not a proper subject for consideration at this time and that, in any event, they are a traditional and valid exercise of Federal power.

Respectfully submitted,

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April, 1936.

APPENDIX

Chapter 107 1935 Laws of the State of Texas

AN ACT authorizing municipalities, political subdivisions and taxing districts to proceed under the provisions of Federal Bankruptcy Laws enacted for the relief of such municipalities, political subdivisions and taxing districts; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That all municipalities, political subdivisions and taxing districts in this State which have power to incur indebtedness, either through action of their own governing bodies or through action of the governing bodies of counties or cities in which such political subdivisions or taxing districts are included, are hereby authorized to proceed under all laws enacted by the Congress of the United States under the Federal Bankruptcy powers, which laws have for their object the relief of municipal indebtedness, including H. R. 5950 of the Seventy-third Congress, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, and acts amendatory thereof and supplementary thereto," approved May 24, 1934, and the officials and governing bodies of such municipalities, political subdivisions and taxing districts are authorized to adopt all proceedings and to do any and all acts necessary or convenient to fully avail such municipalities, political subdivisions and taxing districts of the provisions of such Acts of Congress.

SEC. 2. The public importance of this measure and the necessity for its enactment to relieve the acute financial embarrassment and to preserve the faith and credit of many municipalities, political subdivisions and taxing districts in this State, create and emergency and an imperative public necessity requiring the suspension of the Constitution

Rule requiring bills to be read on three separate days in each House, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Emergency Farm Mortgage Act, as Amended

PART 4—REFINANCING OF AGRICULTURAL IMPROVEMENT DISTRICT INDEBTEDNESS FOR THE BENEFIT OF FARMERS

LOANS BY RECONSTRUCTION FINANCE CORPORATION

SEC. 36. The Reconstruction Finance Corporation is authorized and empowered to make loans as hereinafter provided, in an aggregate amount not exceeding $125,000,000, to or for the benefit of drainage districts, levee districts, levee and drainage districts, irrigation districts, and similar districts, mutual nonprofit companies and incorporated water users' associations duly organized under the laws of any State, and to or for the benefit of political subdivisions of States, which prior to the date of enactment of this Act have completed projects devoted chiefly to the improvement of lands for agricultural purposes. Such loans shall be made for the purpose of enabling any such district, political subdivision, company, or association (hereafter referred to as the "borrower") to reduce and refinance its outstanding indebtedness incurred in connection with any such projects; or, whether or not it has any such indebtedness, to purchase or otherwise acquire in connection with such project storage reservoirs or dams or sites therefor, or additional water rights, or canals, ditches, or rights-of-way for the conduct of water, or other works or appurtenances necessary for the delivery of water, provided such purchase or acquisition is not intended to bring additional lands into production. Such loans shall be subject to the same terms and conditions as loans made under section 5 of the Reconstruction Finance Corporation Act[illegible]s

amended; except that (1) the term of any such loan shall not exceed forty years; (2) each such loan shall be secured by bonds, notes, or other obligations which are a lien on the real property within the project or on the assessments, taxes, or other charges imposed by the borrower pursuant to State law, or by such other collateral as may be acceptable to the Corporation; (3) the borrower shall agree not to issue during the term of the loan any other bonds so secured except with the consent of the Corporation; (4) the borrower shall agree, insofar as it may lawfully do so, that so long as any part of such loans shall remain unpaid the borrower will in each year apply to the repayment of such loan or to the purchase or redemption of the obligations issued to evidence such loan, an amount equal to the amount by which the assessments, taxes, and other charges collected by it exceed (a) the cost of operation and maintenance of the project, (b) the debt charges on its outstanding obligations, and (c) provision for such reasonable reserves as may be approved by the Corporation; and (5) in the case of a loan to reduce or refinance its outstanding indebtedness, the borrower shall agree, to the satisfaction of the Corporation, to reduce, insofar as it lawfully may, the annual taxes, assessments, and other charges imposed by it for or on account of the project by an amount proportional to the reduction in the corresponding annual requirements for principal and interest of its outstanding indebtedness by reason of the operation of this section. No loan shall be made under this section until the Reconstruction Finance Corporation (A) has caused an appraisal to be made of the property securing and/or underlying the outstanding bonds of the applicant, (B) has determined that the project of the applicant is economically sound, and (C) in the case of a loan to reduce or refinance the outstanding indebtedness of an applicant, has been satisfied that an agreement has been entered into between the applicant and hold-

ers of its outstanding bonds or other obligations under which the applicant will be able to purchase or refund all or a major portion of such bonds or other obligations at a price determined by the Corporation to be reasonable after taking into consideration the average market price of such bonds over the six months' period ending March 1, 1933, and under which a substantial reduction will be brought about in the amount of the outstanding indebtedness of the applicant.

When any loan is authorized pursuant to the provisions of this section and it shall then or thereafter appear that repairs and necessary extensions or improvements to the project of such district, political subdivision, company, or association are necessary or desirable for the proper functioning of its project or for the further assurance of its ability to repay such loans, and if it shall also appear that such repairs and necessary extensions or improvements are not designed to bring new lands into production, the Corporation, within the limitation as to total amount provided in this section, may make an additional loan or loans to such district, political subdivision, company, or association for such purpose or purposes. When application therefor shall have been made by any such district, political subdivision, company, or association any loan authorized by this section may be made either to such district, political subdivision, company, or association or to the holders or representatives of the holders of their existing indebtedness, and such loans may be made upon promissory notes collateraled by the obligations of such district, political subdivision, company, or association or through the purchase of securities issued or to be issued by such district, political subdivision, company, or association.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1935

No. 859

C. L. ASHTON,

Petitioner,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. 1,

Respondent.

BRIEF IN BEHALF OF RECLAMATION DISTRICT NO. 1000, NEVADA IRRIGATION DISTRICT AND IRRIGATION DISTRICTS ASSOCIATION OF CALIFORNIA, AS AMICI CURIAE.

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BRIEF IN BEHALF OF RECLAMATION DISTRICT NO. 1000, NEVADA IRRIGATION DISTRICT AND IRRIGATION DISTRICTS ASSOCIATION OF CALIFORNIA, AS AMICI CURIAE.

In accordance with permission granted by the Court, the following brief in behalf of Reclamation District No. 1000, Nevada Irrigation District and Irrigation Districts Association of California, as amici curiae, is respectfully submitted.

I.

THE INTEREST OF AMICI CURIAE.

Reclamation District No. 1000 is a reclamation district created by special act of the legislature of the State of California, approved April 8, 1911. (Stats. 1911, page 835.) It is a public corporation or agency of the State of California.

9 *California Jurisprudence*, page 856;
Morrison v. Smith, 211 Cal. 36, at page 40.

In Section 2 of the Act creating the reclamation district, it is provided that the district "shall have all of the rights and powers which are now or may hereafter be conferred by the provisions of the Political Code, or by other laws of the state, upon reclamation or swamp land districts, * * *". Sections 3446 to 3493½, inclusive, of the Political Code of the State of California are the controlling laws of the State pursuant to which reclamation districts function. Section 3480 of said Code empowers reclamation districts to create bonded debts and Section 3480a thereof empowers said districts to issue refunding bonds.

So created and empowered, Reclamation District No. 1000 has heretofore authorized and put out two original bond issues pursuant to Section 3480 and two refunding issues pursuant to Section 3480a. Bonds of the original issues, as authorized and issued were dated and in amounts, as follows:

Issue	Date of	Amount
Original First	January 1, 1913	$1,997,344.40
Original Second	July 1, 1917	1,000,000.00
Total original bonds authorized and issued		$2,997,344.40.

The proceeds derived from the sale of these bonds was devoted to reclaiming approximately 55,000 acres of swamp and overflowed lands across the American River from the City of Sacramento and extending northerly along the easterly bank of the Sacramento River, from the junction of the American River with the Sacramento River, a distance of about twenty miles. The works of reclamation constructed with the proceeds of the sale of the bonds consisted of a levee system surrounding the entire district, an internal drainage system and two large pumping plants. The works are complete and the entire acreage within the district is fully reclaimed and is intensively cultivated.

Refunding bonds, as authorized, were dated and in amounts, as follows:

Issue	Date of	Amount
First Refunding	January 1, 1924	$1,697,344.40
Second Refunding	January 1, 1927	1,000,000.00
Total refunding bonds authorized		$2,697,344.40,

of which amount refunding bonds were issued as follows:

Issue	Date of	Amount
First Refunding	January 1, 1924	$ 700,000.00
Second Refunding	January 1, 1927	300,000.00
Total refunding bonds issued		$1,000,000.00.

The proceeds of the sale of refunding bonds was used solely to retire maturing original bonds. Through assessment calls made against the landowners, and by bonds acquired by landowners and turned in as payments on account of bond assessments pursuant to an amendment to Section 3480 of the Political Code made in 1923 (Stats. 1923, page 598 at 608), the bonded debt of the district had been reduced as of May 7, 1934 (being the date of a refinancing loan granted the district by Reconstruction Finance Corporation), to a total sum of $2,268,344.40, as follows:

Original First Issue	$ 760,344.40
Original Second Issue	566,000.00
First Refunding Issue	655,000.00
Second Refunding Issue	287,000.00
Total	$2,268,344.40.

The bonds were secured by benefit assessments against the lands within the district. From the date of the original issue to the year 1930, assessment calls to service the bonds were met with substantially no defaults. However, with the coming of the depression and the collapse of agricultural commodity prices, the delinquencies multiplied until finally there was practically a complete failure of the landowners to meet the calls to service January 1, 1934 maturi-

ties of principal and interest. In the face of this failure, the district had no alternative than to default under its four bond issues. The depression, responsible for this default, being world-wide, created a national emergency resulting in the enactment by Congress of the "Emergency Farm Mortgage Act of 1933", 48 Stats. 49; Public–No. 10–73rd Congress, Part 4, Section 36 et seq. Reclamation District No. 1000, with default at January 1, 1934 inevitable, under authority of the Act last cited, filed an application with Reconstruction Finance Corporation for a loan to refinance its bonded debt in December, 1934. In response to this application, Reconstruction Finance Corporation granted the district a loan on May 7, 1934, in the sum of $1,609,000.00, or at the rate of about $700.00 for each $1000.00, face value, of bonds outstanding. Out of the proceeds of this loan, there has now been acquired all but $50,300.00 of the $2,-268,344.40 of outstanding bonds of the district as set out above. Of the bonds not deposited under the refinancing plan, $16,300.00 are held by unknown owners who have not presented coupons for several years and the remainder of $34,000.00 are held by two owners, both of whom have refused to deposit and have declared that they will not do so unless and until this Court shall have upheld as constitutional, Chapter IX of "An Act to establish a uniform system of bankruptcy throughout the United States", said Chapter having been enacted May 24, 1934.

U. S. C. A., Title 11, 1935 Pocket Sup., page 200, Section 303;

Public–251–73rd Congress.

The question presented to this Court in the above entitled action is the constitutionality of said Chapter IX and, as will appear from the facts hereinabove recited, Reclamation District No. 1000 has a real and substantial interest in that question.

Nevada Irrigation District is similarly interested in the question now before the Court. This district is one organized under the provisions of the "California Irrigation District Act". (Stats. 1897, page 254, as amended; Deering's General Laws of California, 1931 ed., Act 3854, page 1948.) It has heretofore issued and now has outstanding bonds dated and in principal amounts, as follows:

Issue	Date of	Amount
Original First Issue, First Division	July 1, 1925	$ 14,000.00
Original First Issue, Second Division	July 1, 1926	16,000.00
Refunding Issue	September 15, 1931	8,070,000.00
	Total	$8,100,000.00.

The validity of these issues, and of the Sections of the Act under which authorized, have been upheld by decisions of the Supreme Court of the State of California.

Mulcahy v. Baldwin, 216 Cal. 517, decided October 14, 1932;

Meyerfeld v. South San Joaquin Irrigation District, 3 Cal. (2d) 409, decided April 30, 1935.

Recently the Reconstruction Finance Corporation has granted this district a loan for the purpose of refunding its bonded debt, the amount of the grant being based upon the ability of the landowners within the district to pay, as found by the Reconstruction Finance Corporation after extended investigations and hearings. The loan granted is in the sum of $4,050,000.00 or fifty cents on the dollar of outstanding bonds. Here again, an agricultural depression of unprecedented severity has made it impossible for the landowners within the district to meet the assessments necessary to service the bonds. The entire project is confronted with financial collapse unless refinancing can be consummated within the terms of the Reconstruction Finance Corporation grant. The district embraces an area of 266,000 acres and has a rural and urban population within its boundaries, or dependent upon its stability, of upwards of 20,000.

There is no doubt that an overwhelming majority of the outstanding bonds of this district will be deposited under the refinancing plan promptly. It is also known that a small percentage of these bonds will not be deposited unless Chapter IX (Secs. 78 to 80) of the Bankruptcy Act may be invoked to compel acceptance of a reasonable plan of debt readjustment. Therefore, this district is also vitally and immediately concerned with upholding the constitutionality of Chapter IX.

The Irrigation Districts Association of California is an association organized and existing for the pur-

pose of serving generally irrigation, reclamation, drainage and similar districts created, organized and existing under the laws of the State of California and devoted to the reclamation of agricultural lands by providing waters for the irrigation thereof and building works for preventing the overflow, or for the drainage, thereof. This association has an active membership of ninety-eight such districts, embracing upwards of four million acres of rich agricultural lands extending throughout the state. These districts have a combined bonded indebtedness of about $100,000,000.00, all eligible to seek refinancing under the provisions of the Emergency Farm Mortgage Act of 1933, hereinabove cited. Applications by various of these districts for loans under said Act have been granted for many millions of dollars and other applications are still pending. In every instance where loans have been granted, a substantial majority of the holders of the outstanding bonds have promptly accepted the refinancing plans and deposited their bonds, but in every case, an inconsequential minority have persisted in withholding acceptance and deposit. Experience has demonstrated that only through according to these districts the right to proceed pursuant to Chapter IX of the National Bankruptcy Act, Sections 78 to 80 thereof, may these districts secure the benefits sought to be accorded such districts by the Congress in enacting the said Emergency Farm Mortgage Act of 1933.

II.

ARGUMENT.

A. CHAPTER IX OF THE BANKRUPTCY ACT (SECTIONS 78 TO 80 THEREOF) SHOULD BE UPHELD AS CONSTITUTIONAL.

Two recent decisions of this Court have considered and passed upon the constitutionality of provisions of the Bankruptcy Act, to-wit:

Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 55 S. Ct. 547, 79 L. Ed. 1593, 97 A. L. R. 1106, decided May 27, 1935;

Continental Illinois National Bank & Trust Company of Chicago v. Chicago, Rock Island & Pacific Railway Company, et al., 294 U. S. 648, 55 S. Ct. 213, 79 L. Ed. 1110, decided April 1, 1934.

In the first of these cases, Section 75, Subdivision (s) of the Bankruptcy Act was held to be unconstitutional as violative of the Fifth Amendment in that it deprived the Land Bank of its property without due process of law. In the second case, Section 77 of the Bankruptcy Act, relating to the reorganization of a corporation unable to meet its debts as they mature, was upheld as valid legislation.

It is respectfully submitted that a comparison of Sections 75 (s) and Section 77 with Sections 78 and following of the Emergency Farm Mortgage Act of 1933, discloses that the decision in the *Radford* case holding 75 (s) as unconstitutional has no applicability to the provisions of the Emergency Farm Mortgage Act of 1933, whereas the holding of the Court in the

Rock Island case, declaring Section 77 to be constitutional, is directly in point to the analogous procedure provided in Sections 78, 79 and 80 of the Bankruptcy Act.

B. COMPARISON OF SECTIONS 75 (s) AND 78-80 OF THE BANKRUPTCY ACT.

The Frazier-Lempke Act (Sec. 75 (s)), being Chapter VIII of the Bankruptcy Act, as enacted, was unlimited as to time and it was not enacted as an emergency measure. It, therefore, was clearly distinguished by the Court from the decision in the mortgage moratorium case. (*Home, etc., Co. v. Blaisdell,* 78 L. Ed. 413.) But Chapter IX was properly enacted as an emergency measure (see Sec. 78) and by Section 79, the bankruptcy jurisdiction accorded by the section is limited to two years only. In Section 75 (s), Congress sought, not as an emergency measure and for a limited period, to impair the substantive rights of the bank. But in Chapter IX, Congress has expressly declared an emergency to exist, adopts legislation for the purpose of meeting the emergency in the public interest, and then restricts the operation of the emergency legislation to a period of two years. It is truly a bankruptcy measure.

The Frazier-Lempke Act contained no provision requiring the concurrence in the refinancing plan of a majority, or any other percentage of the creditors. In effect, it practically permitted the debtor to rewrite his obligations, restricted only by the amount of the

appraisement, or reappraisement, contemplated by the Act. No such arbitrary provision is contained within Chapter IX. As the Act read at the time the pending case arose, the acceptance in writing of 66⅔% in amount of the claims of each class of the creditors of the taxing district affected by the plan is a prerequisite to confirmation. In the case of Section 75 (s), there is in no sense a composition, as contemplated by Section 74, Subdivision (e) of the Bankruptcy Act, but instead, as shown above, an arbitrary taking over of property rights of the creditors for the exclusive benefit of the debtor. The Fifth Amendment was clearly violated.

It thus appears that a very marked difference lies between the so-called Frazier-Lempke Act and Chapter IX. To summarize, the former was without time limit; the latter is restricted to two years. Under the former, the Court may enforce the adjustment against the will of every creditor. Clearly due process is violated. But under the latter, acquiescence of two-thirds of the creditors was, at the time the case arose, essential to a decree, thus fully conforming with the theory of Section 74 (e) of the Bankruptcy Act governing compositions, and Section 74 (e) has stood the test of constitutionality under the Act of 1874 as well as the present Bankruptcy Act of July 1, 1898.

7 *Corpus Juris* 341, et seq.;

Cumberland Glass Manufacturing Co. v. DeWitt, 237 U. S. 447, 59 L. Ed. 1042 at 1045.

C. COMPARISON OF SECTIONS 77 AND 78-80.

Section 77 of the Bankruptcy Act is analogous to the provisions of Chapter IX. In theory, it differs only in that under Section 77, providing for the reorganization of railroads, the plan must be submitted to the Interstate Commerce Commission which, following a hearing, shall render a report as to whether the plan is equitable, fair to creditors, financially advisable, and in the public interest. (Sub. d.) In Subdivision (e), it is provided that the commission shall not have authority to finally approve the plan:

> "* * * until it has been accepted in writing and such acceptance has been filed in the proceeding by or on behalf of creditors holding two-thirds in amount of the claims of each class whose claims or interest would be affected by the plan, and by or on behalf of stockholders of the debtor holding two-thirds of the stock of each class."
>
> U. S. C. A., Title 11, Section 205, Subdivision (e).

In comparison with this requirement, the attention of the Court is directed to the marked similarity of Subdivision (d) of Chapter IX. It reads:

> "(d) The plan of readjustment shall not be confirmed until it has been accepted in writing, filed in the proceeding, by or on behalf of creditors whose claims have been allowed holding two-thirds in amount of the claims of each class whose claims have been allowed and would be affected by the plan, and by creditors holding 66⅔ per centum * * * in amount of the claims of all classes of the taxing district affected by the plan, * * * and

such plan has been accepted and approved by the taxing district in writing filed in the proceeding, signed in its name by an authorized authority: * * *."

U. S. C. A., Title 11, Section 303, Subdivision (d).

In upholding the constitutionality of Section 77 of the National Bankruptcy Act, this Court said in

Continental Illinois National Bank and Trust Company v. Chicago, Rock Island & Pacific Railway Company, et al., 294 U. S. 648, 79 L. Ed. 1110, at page 1123,

in part, as follows:

"Article I, Sec. 8, cl. 4, of the Federal Constitution vests Congress with the power to 'establish * * * uniform laws on the subject of bankruptcies throughout the United States'; and the simple question is—does Sec. 77 constitute a law on the subject of bankruptcies? * * * By the act of 1867, as amended by the act of (January 22) 1874, chap. 390, Sec. 17, 18 Stat. at L. 178, 182, the debtor for the first time was permitted, either before or after an adjudication in bankruptcy, to propose terms of composition to his creditors to become binding upon their acceptance by a designated majority and confirmation by the judge. The fundamental and radically progressive nature of these extensions becomes apparent upon their mere statement; but all have been judicially approved or accepted as falling within the power conferred by the bankruptcy clause of the Constitution. Taken altogether, they demonstrate in a very striking way the capacity of the bankruptcy

clause to meet new conditions as they have been disclosed as a result of the tremendous growth of business and development of human activities from 1800 to the present day. And these acts, far-reaching though they may be, have not gone beyond the limit of congressional power; but rather have constituted extensions into a field whose boundaries may not yet be fully revealed. * * * Obviously, Sec. 77 does no more than follow the line of historical and progressive development projected by previous acts. As outlined by that section, a plan of reorganization, when confirmed, cannot be distinguished in principle from the composition with creditors authorized by the act of 1867, as amended by the act of 1874. It is not necessary to the validity of either that the proceeding should result in an adjudication of bankruptcy. The constitutionality of the old provision for a composition is not open to doubt."

Continuing, and in part quoting from the decision of this Court in the case of

Canada and Southwestern Railroad Company v. Gebhard, 109 U. S. 527, 27 L. Ed. 1020, at 1027,

the Court, at 79 L. Ed. page 1127, held:

"The scheme when confirmed by the court became binding upon the non-assenting minority and this court held it to be thus binding upon bondholders who were citizens of the United States and who sued in courts of the United States to recover on their bonds. The 'scheme' of the Canadian law was not unlike the 'plan' of Sec. 77. The significant part of the court's opinion, so far as the question now under discussion

is concerned, is the following, which appears at p. 536: 'The confirmation and legalization of "a scheme of arrangement" under such circumstances is no more than is done in bankruptcy when a "composition" agreement with the bankrupt debtor, if assented to by the required majority of creditors, is made binding on the non-assenting minority. In no just sense do such governmental regulations deprive a person of his property without due process of law. They simply require each individual to so conduct himself for the general good as not unnecessarily to injure another. Bankrupt laws have been in force in England for more than three centuries, and they had their origin in the Roman law. The Constitution expressly empowers the Congress of the United States to establish such laws. Every member of a political community must necessarily part with some of the rights which, as an individual, not affected by his relation to others, he might have retained. Such concessions make up the consideration he gives for the obligation of the body politic to protect him in life, liberty, and property. Bankrupt laws, whatever may be the form they assume, are of that character.' * * * It is in entire harmony with the spirit of bankrupt laws, the binding force of which, upon those who are subject to the jurisdiction, is recognized by all civilized nations. It is not in conflict with the Constitution of the United States, which, although prohibiting States from passing laws impairing the obligation of contract, allows Congress 'to establish * * * uniform laws on the subject of bankruptcy throughout the United States'. Unless all parties in interest, wherever they reside, can be bound by the arrangement

which it is sought to have legalized the scheme may fail. It is unnecessary to consider the criticism, sometimes made, that these excerpts are dicta merely, since we are of opinion that they are sound in principle. It follows, from what has now been said, that Sec. 77, in its general scope and aim, is within the power conferred by the bankruptcy clause of the Constitution; and we so hold." (79 Law ed. 1127.)

III.

RECLAMATION, IRRIGATION AND SIMILAR DISTRICTS ORGANIZED UNDER THE LAWS OF THE STATE OF CALIFORNIA ARE EMPOWERED BY LAW TO INVOKE THE PROVISIONS OF CHAPTER IX.

The question may be raised as to whether or not state agencies, such as are here involved, have authority to invoke said Chapter IX. Being creatures of the statute, admittedly such districts may only undertake those things for which the statute accords express authority, or which are necessarily implied from the express grants. It so happens that the Legislature of the State of California has made ample provision empowering these districts to invoke the benefits of said Chapter IX. Chapter 4 of the statutes of the State of California, enacted at a special session of the Legislature which convened September 12, 1934, meets the question squarely and accords plenary authority in the premises to all such districts.

California Stats. 1934 (Extra Session), page 4.

IV.

CONCLUSION.

It is respectfully submitted that Chapter IX is so drafted as to avoid the constitutional objections properly interposed to Chapter VIII in the *Radford* case; that it meets all of the requirements of the Fifth Amendment, neither contravening said Amendment nor any other provision of the Federal Constitution or any of the amendments thereto; that it is emergency legislation properly enacted to meet a serious crisis in the economic life of the nation, and that an early decision is urgently required to the end that all parties, creditors as well as debtors of the districts, may proceed to stabilize a pending chaotic condition.

Dated, Sacramento, California,
April 22, 1936.

Respectfully submitted,
C. F. METTEER,
Attorney for Reclamation District No. 1000, Nevada Irrigation District and Irrigation Districts Association of California, as Amici Curiae.

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM 1935

C. L. ASHTON ET AL. ..... *Petitioners,*

v. No. 859

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NUMBER ONE

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF AS *AMICUS CURIAE*

CHAS. D. FRIERSON,

Counsel for Drainage District Number Seven, of Poinsett County, Arkansas, and other districts as Amicus Curiae.

DEMOCRAT P. & L. CO., LITTLE ROCK

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF AS *AMICUS CURIAE*

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

May it Please the Court:

The undersigned, as counsel for Drainage District Number Seven, of Poinsett County, Arkansas, and several other drainage and levee districts in Arkansas, respectfully moves this Honorable Court for leave to file the accompanying brief in this cause as *amicus curiae.*

.....

CHAS. D. FRIERSON,
Counsel for Drainage District Number Seven, of Poinsett County, Arkansas, and other districts as Amicus Curiae.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1935

C. L. ASHTON ET AL. ..... *Petitioners,*

v. No. 859

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NUMBER ONE

BRIEF OF CHAS. D. FRIERSON AS *AMICUS CURIAE*

I.

PRELIMINARY STATEMENT

The interest of the undersigned in the litigation rests upon the fact that he is counsel for several drainage and levee districts in Arkansas which are being refinanced with the consent of more than 90% of bondholders in each case, and in order to make the compromise effective, it may be necessary for the districts to follow Section 80 of the Bankruptcy Act, being the Municipal Debt Readjustment Act.

Drainage District No. 7, Poinsett County, Arkansas, one of the largest drainage districts in the South, is now in bankruptcy under this Act; its petition was filed on July 12, 1934, and 98% of creditors have accepted the plan to refinance at 25.879c on the dollar of principal. By the plan, an outstanding issue of $5,600,000 of bonds will be refinanced by an issue of

about $1,650,000; the interest rate and the annual tax rate will be reduced.

Default of the district resulted from excessive floods, bank failures and the general financial depression, so that without scaling down the debt the lands of the district could never pay the bonds together with the long accumulated interest. The holders of only $25,000 of bonds are actively contesting the plan and the remaining bonds of the $112,000 or so still outstanding simply have not expressed either approval or rejection, considerable blocks of such bonds being held in trust in such manner that they cannot be delivered until the final decree in the Bankruptcy Court. The evidence has been taken and the Special Master's report upholding the Readjustment Plan has just been filed and the whole case should reach a final decree within thirty days from this date. Hence the decision of this Honorable Court in the present case will determine action upon the refinancing plan of said district and this case is of extreme importance to said district.

In addition to Drainage District No. 7, the undersigned represents also the following drainage and levee districts in Arkansas, all of which may be affected to a considerable extent by the determination of the present suit, and in each case more than 90 per cent of the bondholders are in favor of the plan, these districts being:

First Slough Drainage District of Greene and Craighead Counties, Arkansas, former bond issue, $32,-

000 being refunded at 50 cents on the dollar of the principal.

Cane Island Drainage District No. 26, of Craighead County, Arkansas, the former bond issue being about $120,000; the plan accepted by all, except $4,000 in bonds, being 60 cents on the dollar of the principal.

Little Bay and Whiteman's Creek Drainage District No. 20 of Craighead County, Arkansas, former bond issue, $102,500 being refunded at 60 cents on the dollar of the principal, and only $4,000 or $5,000 of the bonds not having consented.

Bay and St. Francis Drainage District No. 29, of Craighead County, Arkansas, an outstanding bond issue of $457,000 to be refinanced at about 65 cents on the dollar, all except a very few thousand dollars of the bonds agreeing thereto.

Village Creek and White River Levee District, of Jackson County, Arkansas, an outstanding bond issue of $55,000, being refinanced at about 60 cents on the dollar of the principal debt, all bondholders agreeing.

Long Prairie Levee District of Lafayette County, Arkansas, with a bond issue in the neighborhood of $150,000, the plan of refinancing being at 60 cents on the dollar of the principal and a large majority of the bondholders favoring it.

Experience proves that in the refinancing of such districts a few bondholders or creditors refuse to join the plan, hoping thereby to obtain a larger dividend or settlement rate than those who co-operate. This

experience, historically, is what caused the passage of Section 80 added to the Bankruptcy Act permitting municipal corporations and improvement districts, with the consent of a fixed percentage of their bondholders, to force through a composition upon the minority creditors. In practically every large district a few bonds do not co-operate, either because they are tied up in trust funds and cannot be voted for the debt plan, or else because their owners desire a larger percentage than satisfies the majority of the creditors.

The writer's contention is that Section 80 is a valid Bankruptcy Act and does not violate the Constitution.

We have not had an opportunity to inspect the record further than the opinions of the District Court and of the Circuit Court of Appeals in this cause. We shall not attempt to discuss any of the particular details of this individual case, but simply to express briefly our views that the Act is Constitutional and, of course, our conviction that it is highly essential and necessary for the welfare of those districts within our knowledge.

Our understanding is that the petitioners base the argument of unconstitutionality upon two propositions, the first being that Congress does not possess authority to pass a Bankruptcy law for relief of an arm of the State, and, second, upon the point that the Act violates the Tenth Amendment to the Federal Constitution in that it invades the reserved powers or the sovereign rights of the State. Further the contention may be made that it is not a valid bankruptcy act.

II.

ARGUMENT

Section 80, the Municipal Debt Adjustment Statute, amending the Bankruptcy Law, does not invade State sovereignty and it is valid for the following reasons:

POINT A.

AN IMPROVEMENT DISTRICT IN ARKANSAS AND OTHER STATES IS NOT AN ARM OF THE STATE FOR ANY GOVERNMENTAL PURPOSE BUT IS AN AGENCY OF THE TAXPAYERS.

In Arkansas and some, if not all, other States, a drainage, levee or other improvement district is definitely *not* an arm of the State for any general governmental purpose. It is only a public quasi-corporation given for very limited purposes the powers of taxation by special assessment and of eminent domain. Its governing board is an agency for its taxpayers. The statute gives it the power to sue and be sued just like private corporations (except for a partial immunity from tort actions). It may compromise and adjust claims as an incident to its liability to suit. Hence we contend that Section 80 does not concern States sovereignty.

> "Hence it will be seen that, if the proposed acts of Drainage District No. 7 of Poinsett County were to be committed by a railroad corpora-

tion, by a private corporation, or by a private person, the venue of the action would be in Cross County where the land is situated and service would be had upon the defendant in Poinsett County, where the act sought to be enjoined was alleged to be committed. But it is insisted that this rule does not apply to a drainage district. We do not agree with counsel in this contention. It is true that drainage districts, levee districts, and road improvement districts are created by statute, and have only such powers as are expressly or impliedly conferred upon them. They are quasi-public corporations with power to sue and be sued with reference to the matters conferred upon them. *Altheimer* v. *Board of Directors of Plum Bayou Levee District*, 79 Ark. 229, 95 S. W. 140; *Board of Directors of St. Francis Levee District* v. *Fleming*, 93 Ark. 490, 125 S. W. 132; and *Board of Levee Inspectors of Chicot County* v. *Southwestern Land & Timber Company*, 112 Ark. 467, 166 S. W. 589. According to these and numerous other decisions of this court, local improvement districts and their commissioners are governmental agencies created as quasi-public corporations deriving their powers directly from the Legislature and exercising them as the agent of the property-owners in the district whose interests are affected by the duties they perform. They exercise no governmental powers except those expressly or impliedly granted by the Legislature. They are not political or civil divisions of the State like counties and municipal corporations created to aid in the general administration of the government. They are not created for political purposes or for the administration of civil government. Hence no public policy would be violated by applying the same rules for the service of

process upon them as are prescribed for private corporations and quasi-public corporations, such as railroads, etc."

Drainage District 7 v. *Hutchins*, 184 Ark. 520, (42 S. W. 2nd 996).

The action of the Board of a drainage district binds the district in like manner as a board of directors binds a private corporation.

Caldwell v. *Guardian Trust Co.*, (C. C. A. 8), 26 F. 2d 218.

This court has discussed the nature of such districts in

Hagar v. *Reclamation District*, 111 U. S. 701.

Houck v. *Little River District*, 239 U. S. 254.

There are innumerable instances in this court where counties, school, drainage, levee and irrigation districts, and other public quasi-corporations created by States have been sued and hence it is certain that they do not partake of the State's immunity to suit. A few instances are:

The County of Lincoln v. *Luning*, 133 U. S. 529.

County of Mercer v. *Hackett*, 1 Wall. 83.

Com'rs Knox County v. *Aspinwall*, 21 How. 539.

Hopkins v. *Clemson College*, 221 U. S. 636.

Litchfield v. *County of Webster*, 101 U. S. 773.

Guardian Sav. & Trust Co. v. *Road Imp. Dist. 7*, 267 U. S. 1.

Mercantile Trust v. *Wilmot Road Dist.*, 275 U. S. 117.

Exchange Trust v. *Drainage District 7*, 278 U. S. 427.

POINT B.

DRAINAGE AND OTHER IMPROVEMENT DISTRICTS HAVE ALWAYS BEEN SUBJECT TO SUIT IN THE FEDERAL COURTS AND EVEN TO RECEIVERSHIP AND MANDAMUS.

Since such suits are not invasions of sovereignty, certainly Section 80 of the Bankruptcy Act permitting a district to go voluntarily into court for a friendly composition of debts does not appear to be any invasion of sovereignty.

This point is a corollary of Point A, and the authorities to that point apply to this. The very idea of an "invasion" of sovereignty implies some forcible intrusion or action from the outside. It seems to us it cannot apply to a permissive statute under which a district must voluntarily come into court, if it comes into court at all, for a friendly settlement with its creditors. Particularly does this seem true when there is required not only voluntary action by the district, but also voluntary consent of a large percentage of its creditors, before jurisdiction under Section 80 can attach.

Sec. 80 of Bankruptcy Act, Ch. 345, 48 Stat. 798, USCA Tit. 11 Sec. 303.

That an act merely permissive in its nature does not invade State sovereignty seems to be held in

Massachusetts v. *Mellon*, 262 U. S. 447:

"What, then is the nature of the right of the State here asserted, and how is it affected by this statute? Reduced to its simplest terms, it is alleged that the statute constitutes an attempt to legislate outside the powers granted to Congress by the Constitution and within the field of local powers exclusively reserved to the States. Nothing is added to the force or effect of this assertion by the further incidental allegations that the ulterior purpose of Congress thereby was to induce the States to yield a portion of their sovereign rights; that the burden of the appropriations falls unequally upon the several States; and that there is imposed upon the States an illegal and unconstitutional option either to yield to the Federal Government a part of their reserved rights, or lose their share of the moneys appropriated. But what burden is imposed upon the States, unequally or otherwise? Certainly there is none, unless it be the burden of taxation, and that falls upon their inhabitants, who are within the taxing power of Congress as well as that of the States where they reside. Nor does the statute require the States to do or to yield anything. If Congress enacted it with the ulterior purpose of tempting them to yield, that purpose may be effectively frustrated by the simple expedient of not yielding.

"In the last analysis, the complaint of the plaintiff State is brought to the naked contention that Congress has usurped the reserved powers of the several States by the mere enactment of the statute, though nothing has been done and nothing

> is to be done without their consent; and it is plain that that question as it is thus presented is political, and not judicial, in character, and therefore is not a matter which admits of the exercise of the judicial power" (pp. 482, 483).

The language of the act very specifically provides only for voluntary action by the district and no district can be forced into the Bankruptcy Court against its will. The purpose of the act is to permit such a district and other municipal corporations the privilege of making a friendly compromise of debts with a majority of its creditors and to render that composition effectual by giving it the status of a bankruptcy or insolvency proceeding in the Federal Court. This is a great privilege and is not an invasion.

POINT C.

SECTION 80 EXPRESSLY PROHIBITS INTERFERENCE WITH GOVERNMENTAL FUNCTIONS IN THE FOLLOWING LANGUAGE:

> "Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any political subdivisions thereof in the exercise of its political or governmental powers, including expenditures therefor."
>
> Sec. 80, Bankruptcy Act, Ch. 345, 48 Stat. 798; USCA 11, Sec. 303 (k).

The foregoing language seems a very careful attempt to preserve intact State sovereignty including all governmental and political powers and even State con-

trol over expenditures. In this connection the point seems to have been raised in the lower court that before a drainage district can take advantage of the Act the State must first pass an act permitting such a district to avail itself of the Bankruptcy Act. This argument is well answered in the opinion of the Circuit Court of Appeals in the present cause. That court points out that the act itself is limited in its operation to a two-year period and that to require the States first to pass permissive acts would render Section 80 useless in many instances because the State Legislatures would not all meet within the effective period of the act. The act itself is perfectly clear that it is available to a district without separate State legislation; but it is provided that if there be such legislation, then it must be complied with by the district. In the State of Arkansas the next session of the General Assembly after the passage of this act of Congress was early in 1935. Had Drainage District No. 7 delayed hoping for a permissive act to be passed, it would have been financially ruined, because creditors were then pressing it vigorously and many suits were pending. Furthermore, the State of Arkansas did not pass a permissive act even at the session of 1935 nor ever, but apparently has taken the position that the act of Congress in itself filled the entire field.

Hence, in all the districts represented by the undersigned, there has been a total absence of State legislation on the subject; and unless these districts can voluntarily avail themselves of the Congressional stat-

ute they are financially ruined and permanently. For instance the bonds of one of these districts at about the time this act was passed, were selling in the open market at 5 cents on the dollar, and by the Debt Readjustment Plan the owners received nearly 26 cents on the dollar.

POINT D.

NO STATE INSOLVENCY LAW COULD BE EFFECTIVE, BECAUSE NO STATE COULD PASS A LAW IMPAIRING THE OBLIGATION OF A CONTRACT, NOR CAN A STATE PASS ANY INSOLVENCY LAW THAT WOULD FILL THE FIELD OF CONGRESSIONAL BANKRUPTCY LAWS.

International Shoe Co. v. *Pincus*, 278 U. S. 261, and cases cited therein.

As to the broader scope of the Federal Bankruptcy Acts see

Continental Illinois Nat. Bank v. *C. R. I. & P. Ry.*, 294 U. S. 648, and cases cited therein.

POINT E.

UNDOUBTEDLY SECTION 80 IS AN ACT ON THE SUBJECT OF BANKRUPTCY.

This court has so recently passed upon and reviewed the authorities upon this question that certainly no elaboration is required in argument. The power of Congress extends to all forms of legislation regarding

insolvency; and composition of this identical type has been upheld as to private corporations.

Canada Southern R. R. v. *Gebhard*, 109 U. S. 527.

Continental Ill. Nat. Bank v. *C. R. I. & P.*, 294, U. S. 647, *supra.*

In re *Imperial Irrigation Dist.*, (D. C.), 10 F. Supp. 832.

Hanover Nat. Bank v. *Moyses*, 186 U. S. 181.

Section 80 is very closely akin to the Corporate Debf Reorganization Act which has been consistently upheld in the Federal lower courts and finally in this Honorable Court in the case above cited. Minor differences exist on account of the different types of insolvents provided for in the respective acts, but their general substance is the same. In each case it is provided that the insolvent may come into court in conjunction with a specified number or percentage of its creditors and may compromise its debts and readjust liens and equities, even impairing the obligation of contracts.

The proviso, of course, is that such a composition may be provided for only by the consent of the specified majority of creditors of each particular class. However, with such consent, existing liens and contractual rights may be changed.

Of course a later State law on insolvency cannot change nor impair the obligation of any contract, but Congress has this power.

CONCLUSION

In each district which avails itself of Section 80, insolvency must exist to the extent at least provided by the terms of the act, and no readjustment plan can be upheld until it pleases the required majority of creditors of each class, nor unless found by the court to be fair and equitable. In substance it is a composition act. No district can be dragged into court under Section 80, although it can be dragged into court by suits for receivership, mandamus and for other remedies much more drastic than a composition.

(Parenthetically, the right to receivership in Arkansas has been abolished by a recent act, but it was expressly upheld while in force and even today hundreds of districts are operating in Federal receiverships which were in force prior to the act prohibiting receivers.)

No one complains of the jurisdiction of the Federal Courts in the suits of bondholders to grant judgment, mandamus, injunction or other remedy to compel payment. If this well recognized jurisdiction does not constitute an invasion of State sovereignty, nor intrude upon the reserved powers of the State, then it seems manifest to us that the mild and healing remedy of permitting an improvement district or municipal corporation to come into court arm in arm with the majority of its creditors and make a composition according to its ability to pay certainly does not con-

stitute an intrusion upon State sovereignty. It is not a violation of any State's right because States have no rights to pass insolvency or bankruptcy acts, but that right is expressly given to the Federal Government.

A bankruptcy or insolvency statute always impairs contracts; but no State Legislature can pass a law permitting impairment of contract obligations. Hence if the Federal Government cannot permit such compositions through its Bankruptcy court, then the situation is one impossible to meet and bondholders in many instances practically will be unable to collect; the particular district may be absolutely unable to pay, and its lands may not be of sufficient value to justify the bondholders in accepting those lands as payment. Many of these districts have levied taxes until there is a grave question as to whether or not they have exceeded the assessed benefits, and hence the margin of security to the bondholders is extremely narrow. In such districts the bondholders are even more interested in obtaining a composition than are the taxpayers of the district.

In improvement districts the benefits are assessed upon an estimate in advance of the result of the improvements. Excessive floods and financial depression have shown that such estimates were excessively high. Lands which were expected to be put in cultivation after construction of drainage and levee works are still wild and their market value has dropped to an insignificant sum. Thus the burden upon cultivated lands

has increased in many instances so that even those lands cannot carry the increased rate necessary to meet existing bonds and interest.

The act should not be looked upon merely as conferring a one-sided benefit upon taxpayers and districts at the expense of bondholders; but it is equally beneficial to the bondholders in that they can obtain a fair cash settlement and may go into court and prevent bondholders who refuse to co-operate from attempting to obtain a preference by their refusal to join in the composition.

If this statute constitutes an invasion of State sovereignty or of the reserved rights of the State, then certainly those invaded welcome the invasion. This act will be the salvation of taxing districts burdened beyond their capacity and at the same time will be the salvation of bondholders who hold obligations of the district beyond the capacity of the district to pay.

It is an act evidencing broad statesmanship and we respectfully urge that it is a valid and constitutional act, and that the decision of the Circuit Court of Appeals upholding it should be affirmed.

Respectfully submitted,

.....

Chas. D. Frierson, for Drainage District No. 7 of Poinsett County, Arkansas, and other districts, as *Amicus Curiae*.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 859.

C. L. ASHTON, ET AL., *Petitioners*,

v.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. 1, *Respondent*.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF JOHN D. McCALL, AMICUS CURIAE.

JOHN D. McCALL,
Amicus Curiae.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 859.

C. L. ASHTON, ET AL., *Petitioners,*

v.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. 1, *Respondent.*

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

The undersigned respectfully represents to the Court:

(1) That he is a lawyer duly admitted in this Court; that his business consists principally in matters pertaining to the issuance of bonds by municipal and other public corporations and in the examination and approval for such bonds. At present he is serving as bond counsel for several municipal and other public corporations which are now in process of refinancing their indebtedness, including thirteen Water Improvement or Irrigation Districts in the State of Texas. The duty accepted by the undersigned insofar as the Texas Irrigation and Water Improvement Districts are concerned is to cooperate with the several districts in the refinancing proceedings, and ultimately to approve the legality of refunding bonds to be issued by the several districts in exchange for the present securities, to the end that his approving opinion will be available to the subsequent holders of said bonds;

(2) That concerning said Texas districts, the following tabulation discloses concerning each, its present outstanding indebtedness and the percentage of said outstanding indebtedness committed to the refinancing plant, to wit:

Name of District	Amount of Present Debt	Percentage on Which Consents Available (Approximate)
Cameron County Water Improvement District No. 2	$556,500.00	92
La Feria Water Control and Improvement District, Cameron County No. 3	1,255,960.00	84
Cameron County Water Control and Improvement District No. 5	1,312,233.00	91
Cameron County Water Control and Improvement District No. 6	452,175.04	88
Cameron County Water Improvement District No. 11	896,933.08	100
Hidalgo County Water Control and Improvement District No. 1	2,088,458.52	90
Hidalgo County Water Improvement District No. 2	2,721,234.00	96
Hidalgo County Water Improvement District No. 3	296,136.45	84
Hidalgo County Water Improvement District No. 5	504,525.00	95
Donna Irrigation District, Hidalgo County No. 1	1,874,165.75	93
Pecos County Water Improvement District No. 1	63,240.00	91
Reeves County Water Improvement District No. 1	241,227.00	84
Ward County Irrigation District No. 1	113,390.19	97

(3) That each district above described has powers and duties similar to those of respondent District.

(4) That the efficacy of Section 80 of the National Bankruptcy Act is important to the undersigned and to said several districts because in each instance (wherein the holders of less than 100 per cent have consented) consents are available immediately in sufficient proportion to assure completion of such refinancing plan, if recourse should be made to the Bankruptcy Court, contingent alone on the finding by such Court that the refinancing plan is reasonable;

(5) That if said Act should be held unconstitutional said refinancing plans could be defeated by minority bondholders;

(6) That the protection of the Municipal Bankruptcy Act against the attack on its constitutionality is of vital importance to said districts and to the majority bondholders of said districts;

WHEREFORE, with the consent of counsel for petitioners having been obtained for the filing hereof, the undersigned respectfully moves this Honorable Court for leave to file the accompanying brief as Amicus Curiae.

JOHN D. MCCALL,
Amicus Curiae.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 859.

C. L. ASHTON, ET AL., *Petitioners*,

v.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. 1,
Respondent.

BRIEF OF JOHN D. McCALL, AMICUS CURIAE.

Preliminary Statement.

The brief of respondent expresses the views of your petitioner and in his opinion clearly establishes the constitutionality of Section 80 of the National Bankruptcy Act. If this brief serves any useful purpose, it is to call the Court's attention to three additional points in support of the constitutionality of the Act.

ARGUMENT.

Summary of Argument.

POINT 1

The functions and services performed by respondent district are identical with the functions and services performed by private corporations organized under the laws of Texas for irrigation purposes. Such private corporations have recourse to the Bankruptcy Courts. It is reasonable to concede to respondent district benefits of the Bankruptcy Act.

POINT 2

Attention of the Court is directed to a case not cited in respondent's brief; viz: *Cartaret County et al* v. *Sovereign Camp, Woodmen of the World,* No. 3819, decided by the Circuit Court of Appeals of the Fourth Circuit on June 3, 1935, 78 Fed. (2nd) 337.

POINT 3

The petitioners, having intervened generally in the suit, cannot challenge the propriety of the proceedings below.

Point 1.

THE FUNCTIONS AND SERVICES PERFORMED BY RESPONDENT DISTRICT ARE IDENTICAL WITH THE FUNCTIONS AND SERVICES PERFORMED BY PRIVATE CORPORATIONS ORGANIZED UNDER THE LAWS OF TEXAS FOR IRRIGATION PURPOSES. SUCH PRIVATE CORPORATIONS HAVE RECOURSE TO THE BANKRUPTCY COURTS. IT IS REASONABLE TO CONCEDE TO RESPONDENT DISTRICT BENEFITS OF THE BANKRUPTCY ACT.

Under the laws of the State of Texas, private corporations may be organized to distribute water for irrigation

purposes. Article 1301 of the Revised Civil Statutes of the State of Texas, 1925 Revision, prescribes the purposes for which private corporations may be organized. Each permitted purpose is contained in a numbered subdivision of said article. Under any one of five subdivisions an irrigation corporation may be organized. For the immediate convenience of the Court, subdivisions 32, 88, 28, 30 and 31 of Article 1301 are copied herein as follows:

Subdiv. 32.

"To construct, maintain, and operate canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes, and wells, and for conserving, storing, conducting and transferring water to all persons entitled to the use of the same for irrigation, mining, milling, manufacturing, the development of power to cities and towns for waterworks and for stock-raising."

Subdiv. 88.

"Private corporations may be created for, or after being created, may so amend their charters to include two or more of the following purposes, namely: the supply of water to the public for irrigation, power, municipal or domestic purposes; the manufacture of and supply of ice to the public. . . ."

Subdiv. 28.

"To grow, prepare for market and sell rice, with power to construct, maintain and operate dams . . . canals, flumes, laterals, and other appurtenances as may be necessary or convenient for the purpose of irrigating."

Subdiv. 30.

"To construct, maintain and operate canals, drains, and ditches outside the corporate limits of cities and towns in any County in Texas."

Subdiv. 31.

"To excavate, maintain and operate drainage ditches, canals, and flumes with power to condemn

lands necessary for the right of way and machinery plants for such drainage ditches, canals, and flumes."

The several subdivisions quoted were adopted by the legislature from time to time during the forty years preceding the 1925 revisions of statutes. Respondent district has the powers and performs the functions permitted to water improvement districts established pursuant to the provisions of Chapter 172 of the General Laws of the State of Texas Passed at the Regular Session of the Thirty-third Legislature in 1913 and the provisions of Chapter 87 of the General Laws of the State of Texas Passed at the Regular Session of the Thirty-fifth Legislature in 1917, including therein the provisions of Section 24 of said Chapter 87 of the General Laws of the State of Texas Passed at the Regular Session of the Thirty-fifth Legislature in 1917, to wit:

"Districts created under the provisions of this Act are hereby empowered to own and construct reservoirs, dams, wells; canals, etc., and to acquire the necessary rights of way for and buy or construct all reservoirs, dams, wells, canals, laterals, sites for pumping plants and all other improvements required for the irrigation of the lands in such district by gift, grant, purchase or condemnation and they may acquire the title to any and all lands necessary or incident to the successful operation thereof, in addition to any of the above, in the manner provided, including the authority by purchase or condemnation, to acquire rights of way for the enlargement, extension or improvement of any existing canals, or ditches for the purpose of raising such canals and ditches jointly with the owners thereof."

An examination of the statutes in reference to the functions of *private* irrigation companies and an examination of the statute delineating the powers of irrigation districts discloses that each has all of the powers granted to the other insofar as irrigation service is concerned. The dif-

ference, of course between the two is that machinery, equipment, etc. for private corporations is obtained through expenditure of its capital or through issuance of its corporate bonds, whereas money for these purposes is made available to an irrigation district through issuance of tax supported bonds.

This case was not tried on its merits and hence no evidence was adduced, but the record shows (R. 56) that the district "was created as a promotion project for the colonization of lands". If the case were tried on its merits, the evidence would show that the district purchased the nucleus of its present irrigation system from a private corporation, which theretofore was serving the lands now constituting the district.

Prior to the adoption of Article 3, Section 52 of the Constitution of Texas in 1903, there was no authority for the legislature to provide for the organization of irrigation or water improvement districts. Until that time the only methods through which a land owner could obtain the benefits of irrigation were to construct irrigation equipment for himself or to patronize a private corporation performing that service. The Supreme Court of Texas has held that private irrigation companies are quasi-public corporations. See *Imperial Irrigation Company* v. *Jayne*, 104 Texas 398; and *Bordew, et al* v. *Trespalacios Rice & Irrigation Company*, 98 Texas 494.

Even at the expense of becoming tedious, the parallel has been drawn to show the identity of services performed by private irrigation corporations and by irrigation and water improvement districts. Apparently there is justification in the contention that respondent district shonld not be denied the right to the benefits of the Bankruptcy Act when private corporations performing identical services have immediate recourse to the benefits of the Act.

Point 2.

ATTENTION OF THE COURT IS DIRECTED TO A CASE NOT CITED IN RESPONDENT'S BRIEF; VIZ: CARTARET COUNTY ET AL. VS. SOVEREIGN CAMP, WOODMEN OF THE WORLD, NO. 3819, DECIDED BY THE CIRCUIT COURT OF APPEALS OF THE FOURTH CIRCUIT ON JUNE 3, 1935, 78 FED. (2nd) 337.

This opinion was written by Judge Parker. A reading of the opinion indicates that Section 80 of the National Bankruptcy Act had the approval of the Court of Appeals of the Fourth Circuit.

Point 3.

THE PETITIONERS, HAVING INTERVENED GENERALLY IN THE SUIT, CANNOT CHALLENGE THE PROPRIETY OF THE PROCEEDINGS BELOW.

The petitioners *intervened generally*[1] in the District Court proceedings (R. 52-53). Equity Rule 37 provides that "intervention shall be in subordination to and in recognition of the propriety of the main proceeding". That rule is a recognition of the principle that parties cannot "deny a jurisdiction to which they voluntarily submitted". *McGoon* v. *Scales*, 9 Wall. 23, 32. It is generally followed in equity receivership proceedings. *King* v. *Barr*, (C. C. A. 9th) 262 Fed. 56, cert. denied 253 U. S. 484; *Union Trust Co.* v. *Jones* (C. C. A.-4th) 16 Fed. (2d) 236. In the latter case, the court in denying the right of an intervenor to challenge the jurisdiction of a receivership said (p. 239):

> "The position of the appellant, Union Trust Company, that upon intervention of the trustees under the mortgage the proceedings should have been dismissed,

[1] In their petitions for intervention the petitioners asked leave "to intervene herein and to be heard on all questions arising in the proceedings * * *" (R. 52). The order granting the petition for intervention reads in part as follows (R. 53-54):

> "It is hereby ordered that the aforesaid applicants be and they are hereby granted leave to intervene herein and to be heard on all questions arising in this proceeding and all issues raised by the aforesaid parties as contestants herein."

and that in what was done to the contrary the Court was without jurisdiction, is clearly untenable. In any event, appellant itself, as intervenor in the same litigation to assert its unsecured indebtedness, was not in a position to make such claim. *It could not intervene in and seek the aid of the Court and at the same time attack and dispossess the Court of its jurisdiction to proceed with the litigation in an orderly way.*" (Italics added.)

Although the equity rules are not necessarily controlling in bankruptcy proceedings (*Daniel* v. *Guaranty Trust Co.*, 285 U. S. 154), it is believed that the principle announced by Rule 37 is of general application,[1] especially since the petitioners could have been heard without intervening.[2] Having chosen to intervene the petitioners would seem to have no basis for attacking the jurisdiction of the District Court at this juncture of the proceedings.

CONCLUSION.

It is respectfully suggested that, for reasons stated and based on authorities cited in Respondent's brief, the constitutionality of Section 80 of the National Bankruptcy Act should be sustained; that on account of the character of the functions performed by respondent district, it is entitled to the benefits of said Act at all events; and that petitioners were not in position to challenge the jurisdiction of the Court in which they intervened generally.

Respectfully submitted,

JOHN D. MCCALL,
Amicus Curiae.

JOHN D. MCCALL,
Lawyer,
16th Floor, Kirby Building,
Dallas, Texas.

---

[1] See history of Rule 37, Hopkins Equity Rules, 8th Edition, p. 232.

[2] Section 80 (e) of the Bankruptcy Act provides:

"Any creditor shall be heard on the question of the proposed confirmation of the plan, and, upon filing a petition for leave to intervene, on such other questions arising in the proceeding as the judge shall determine."

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Supreme Court of the United States

OCTOBER TERM, 1935.

No. 859.

C. L. ASHTON ET ALS., PETITIONERS,

VS.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. 1, RESPONDENT.

BRIEF OF AMICUS CURIAE.

HARVEY RONEY,
Amicus Curiae.

GEORGE D. BEARDSLEY,
HARRY L. DONNELLY,
of Kansas City, Missouri,

MARTIN E. LAWSON,
of Liberty, Missouri,
Of Counsel.

E. L. MENDENHALL, INC., 8 WEST 9TH ST., KANSAS CITY, MO.

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Supreme Court of the United States

OCTOBER TERM, 1935.

No. 859.

C. L. ASHTON ET ALS., PETITIONERS,

VS.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. 1, RESPONDENT.

BRIEF OF AMICUS CURIAE.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The *amicus curiae* herein respectfully prays and requests permission of this Honorable Court to file his brief and argument in this cause and trusts that the same may be of some assistance to this Honorable Court in the determination and adjudication of said cause.

The *amicus curiae* accepts and adopts the statement of facts, the statement as to jurisdiction and the statement of prior decisions of the lower courts in this cause as set forth in the brief of respondent filed in this cause.

The principal question presented and on which *amicus curiae* desires to file brief is on the constitutionality of the act approved May 24, 1934, amending the Bankruptcy Act which was approved July 1, 1898, as to whether or not said amendment is or is not constitutional and does or does not violate the Tenth Amendment of the Constitution of the United States.

QUESTION PRESENTED.

The Bankruptcy Act approved July 1, 1898, as amended by Sections 78, 79 and 80, approved May 24, 1934, is constitutional and does not violate Tenth Amendment of the Constitution of the United States.

National Bankruptcy Act of July 1, 1898, Chapter I, Sec. 1.

Article I of the Constitution of the United States, Section 8.

Hamilton v. *Kentucky Distilleries and Warehouse Co.*, 251 L. S. 146.

County of Lincoln v. *Luning*, 133 L. S. 529.

Loeb v. *Trustees of Columbia Township*, 179 U. S. 472.

Continental Illinois Bank & Trust Co. v. *Chicago, Rock Island and Pacific Ry. Co.*, 294 U. S. 648.

ARGUMENT.

As counsel for the Birmingham Drainage District of Clay County, Missouri, we feel that all such districts have an interest in the final determination and adjudication of this cause. Said district has had a loan approved by the Reconstruction Finance Corporation and is now in a position to close the same.

Without going into the full discussion of all the points involved in this case before this Honorable Court, we feel that the question of whether or not the Amendment to the Bankruptcy Act approved May 23, 1934, violates the Tenth Amendment to the Federal Constitution, is a question of vital importance to all drainage districts. It would seem that the answer to this problem is not one that requires any great amount of research or the citing of any large number of authorities, but is a proposition that is comparatively simple and fundamental and that it may be determined by investigation into the few fundamental points which are involved.

Article I of the Constitution of the United States, Section 8, provides that "the Congress shall have power * * * to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcy throughout the United States."

Clearly there can be no question but what the amendment herein involved deals with the question of bankruptcies. It is similar to Section 77 amending the

Bankruptcy Act in its scope and its purposes, save and except that it deals with the subdivisions of a state.

Said Section 77 has been held constitutional by this Honorable Court in the case of *Continental Illinois Bank and Trust Co.* v. *Chicago, Rock Island and Pacific Ry. Co.*, 294 U. S. 648.

Let us however look for just one moment at the wording of the Tenth Amendment. It says:

"The powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people."

It will be noted that the subject of bankruptcies is a subject that was delegated to the United States in the first article of our Constitution. Therefore, we cannot say that the amendment in question is not included in a power delegated to the United States by the Constitution.

The chief objection of the petitioner to the amendment in this cause seems to be that it deprives the state of some right which is left to the state by virtue of the Tenth Amendment, *supra.*

Section 1 of Chapter I of the National Bankruptcy Act of 1898 is the section entitled "Section 1—Meaning of Words and Phrases." In other words it is a section which deals with definitions and the sixth definition given therein is as follows: "Corporations shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include limited or other partnership associations organized under laws, making the

capital subscribed alone responsible for the debts of the association."

Clearly it would have been within the power and authority of the Congress in passing this Bankruptcy Act to have added that the word "corporation" should include "any municipality or other political subdivision of any state, including (but not hereby limiting the generality of the foregoing) any county, city, borough, village, parish, town or township, incorporated tax or special assessment district and any school, drainage, irrigation, reclamation, levee, sewer or paving sanitary port improvement or other districts."

Had it done so, it would have been within the clear authority and power of the Congress and we cannot believe that it would have been challenged in this proceeding, and yet the political subdivisions of the state above named are exactly the ones which are included in Section 80 of the Amendment to the Bankruptcy Act. They could have been included by definition in the original Bankruptcy Act itself. The fact that they are brought in by amendment later on does not affect the constitutionality of either the Bankruptcy Act or of said Section 80.

This Honorable Court in the case of *Hamilton* v. *Kentucky Distilleries and Warehouse Co.*, 251 U. S. 146, in passing upon the question of war-time prohibition at page 156 of the opinion by Mr. Justice Brandeis said:

> "But it is none the less true that when the United States exerts any of the powers conferred upon it by the Constitution, no valid objection can be based upon the fact that such exercise may be

attended by the same incidents which attend the exercise by a state of its police power, or that it may tend to accomplish a similar purpose."

Thus it will be seen that even though the states might themselves have power to legislate relative to their political subdivisions, that this itself would not deprive the United States of the power to legislate in a matter in which the United States was given authority to legislate by our constitution.

Section 80 (k) provides:

"Nothing contained in this chapter shall be construed to limit or impair the power of any state to control, by legislation or otherwise, any political subdivision thereof in the exercise of its political or governmental powers, including expenditures therefor, and including the power to require the approval by any governmental agency of the state of the filing of any petition hereunder and of any plan of readjustment, and whenever there shall exist or shall hereafter be created under the law of any state any agency of such state authorized to exercise supervision or control over the fiscal affairs of all or any political subdivision thereof, and whenever such agency has assumed such supervision or control over any political subdivision, then no petition of such political subdivision may be received hereunder unless accompanied by the written approval of such agency, and no plan of readjustment shall be put into temporary effect or finally confirmed without the written approval of such agency of such plans."

Thus it will be seen that Congress intended to make this act permissive and to permit the states not only to have concurrent jurisdiction, but to permit the states

to prevent a creditor described in Section 80 from coming under the benefits of its provisions without the consent of the proper state authority.

The respective states as such have no direct pecuniary interest in any proceeding which might be filed under Section 80 and therefore it would seem that the foregoing powers granted to the states by Subdivision k above is most generous in leaving the authority with the state to do what it might deem proper in any of its subdivisions with reference to Section 80 of the Amendment to the Bankruptcy Act.

In this regard it is interesting to note what this Honorable Court said in the case of the *County of Lincoln* v. *Nicholas Luning*, 133 U. S. 529. We quote from the opinion of Mr. Justice Brewer in that case on page 530 thereof, as follows:

> "The Eleventh Amendment limits the jurisdiction only as to suits against a state. It was said by Chief Justice Marshall, in *Osborn* v. *The Bank*, 22 U. S. 9 Wheat. 738, 857 (6:204, 232), that the 'Eleventh Amendment, which restrains the jurisdiction granted by the Constitution over suits against states, is of necessity limited to those suits in which the state is a party on the record.'
>
> "While that statement was held by this court in the case of *Re Ayers*, 123 U. S. 443 (31:216), to be too narrow, yet by that decision the jurisdiction was limited only in respect to those cases in which the state is a real, if not a nominal defendant; and while the county is territorially a part of the state, yet politically it is also a corporation created by and with such powers as are given to it by the state. In this respect it is a part of the state only in that remote sense in which any city, town or other munic-

ipal corporation may be said to be a part of the state. *Metropolitan R. Co.* v. *Dist. Col.*, 132 U. S. 1 (33:231)."

We also wish in this connection to quote from the case of *Louis Loeb* v. *Trustees of Columbia Township*, 179 U. S. 472. In the opinion of this Honorable Court delivered by Mr. Justice Harlan, at pages 485, 486, this court said:

> "When the Act of 1888 was passed it was the established law that a municipal corporation created under the laws of a state, with power to sue and be sued and to incur obligations, was to be deemed a citizen of that state for purposes of suit by or against it in the courts of the United States. In *Cowles* v. *Mercer County*, 7 Wall. 118, 122, *sub. nom. Mercer County Supvrs.* v. *Cowles*, 19 L. Ed. 86, 88, this court said: It is enough for this case that we find the board of supervisors (of the county) to be a corporation authorized to contract for the county. The power to contract with citizens of other states implies liability to suit by citizens of other states, and no statute limitation of suability can defeat a jurisdiction *given by the Constitution.' Lincoln County* v. *Luning*, 133 U. S. 529, 531, 33 L. Ed. 766, 767, 10 Sup. Ct. Rep. 363; *McCoy* v. *Washington County*, 3 Wall. Jr. 381, 384, Fed. Cas. No. 8731; Dillon, Removal of Causes, Sec. 105. We perceive nothing in that act indicating any purpose of Congress to exclude from the jurisdiction of the Circuit Courts of the United States suits by or against municipal corporations having authority by the laws creating them to sue or to incur liabilities, in their corporate name. It must, therefore, be taken that the words 'any corporation,' in the Act of 1888, include municipal as well as private corporations."

Thus it will be seen from the last two foregoing cases that the respective states are not being deprived of any of their rights or interests as states and that municipal corporations and subdivisions of the state created by state statutes are clearly within that class over which jurisdiction is vested in the federal government when it sees fit to exercise such jurisdiction.

Note again, the last sentence in the last above opinion:

> "It must therefore be taken that the words 'any corporation' in the Act of 1888, include municipal as well as private corporations."

It is therefore the respectful suggestion to the Honorable Court that had the original Bankruptcy Act merely said in its description of the word "corporation" that the term "corporation" should mean "any corporation," that municipal corporations, drainage and levee districts and the like, which are in fact incorporated by act of the legislature or by virtue of authority of acts of the legislatures of the respective states would have been within the original Bankruptcy Act and the inclusion could not then have been questioned.

We respectfully submit and suggest that it cannot now be questioned.

What the amendment herein to be decided has done is merely to enlarge the definition of the word "corporation" as provided in the original Bankruptcy Act and to grant the powers, privileges and procedure to corporations thus included, which are granted to corporations enumerated in Section 77 of the Amendment

to the Bankruptcy Act which has been approved by this Honorable Court.

We can see no reason why it is not as important to the people of the United States generally and to the Government of the United States generally to have corporations of a public nature included in the provisions of the Bankruptcy Act, as it is to have private individuals and private corporations included in said provisions. As we see the situation the only reason that they were not incorporated in the Bankruptcy Act long since is due to the fact that they represent a type of corporation which is comparatively recent either in its formation or which has but recently shown by facts and circumstances, that it should be entitled to the provisions of the Bankruptcy Act. Up to recent times, the question of a county or city going bankrupt was a proposition almost unheard of, and the other classes of public corporations are so comparatively new in their organization and in their financial developments that it has just begun to be apparent that they will have their troubles the same as individuals and private corporations, and we respectfully suggest that the same spirit of helpfulness in general welfare which caused the matter of bankruptcies to be mentioned so early in our Constitution, and which caused the passage of our Bankruptcy Act to enable individuals and private corporations to throw their unbearable burdens aside and forge ahead anew, was the spirit which prompted the enactment of the amendments to the bankruptcy involved in this cause. Unquestionably these amendments pro-

vide the most satisfactory method of solution for the difficult situation in which these public corporations find themselves that has yet been devised. The amendments constitute a benefit to our people. They constitute such a benefit that our Congress has seen fit to recognize the necessity for giving the opportunity for such benefits. They have not deprived the states of our Union of any powers whatever; they have not violated the Tenth Amendment to our Constitution. They have merely enlarged the scope by definition and procedure of the inherent and fundamental power to regulate bankruptcies as given to our Congress by our Constitution.

Conclusion.

We respectfully submit to this Honorable Court that the contention of petitioners herein in this regard is without merit and that these public corporations should be allowed to proceed under and by virtue of the provisions granted to them under these amendments to the Bankruptcy Act.

.....,

HARVEY RONEY,
Amicus Curiae.

GEORGE D. BEARDSLEY,
HARRY L. DONNELLY,
of Kansas City, Missouri,

MARTIN E. LAWSON,
of Liberty, Missouri,
Of Counsel.

Certificate of Counsel.

Harvey Roney of Kansas City, Missouri, hereby certifies that he is a regularly licensed attorney, admitted to practice in the Supreme Court of the United States, and that the foregoing brief as *amicus curiae* is submitted in good faith and for the purpose of aiding the court in this controversy.

.....,

HARVEY RONEY,
914 Commerce Building,
Kansas City, Missouri,
Amicus Curiae.

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IN THE

Supreme Court of the United States.

C. L. ASHTON et al.,
Petitioners,
vs.
CAMERON COUNTY WATER IMPROVEMENT DISTRICT NUMBER ONE,
Respondent.

No. 859.

MOTIONS FOR PERMISSION TO FILE BRIEFS AND AMICUS CURIAE BRIEF.

R. L. WARD,
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CHAS. CLAFLIN ALLEN, JR.,
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IN THE

Supreme Court of the United States.

C. L. ASHTON et al.,
Petitioners,
vs.
CAMERON COUNTY WATER IMPROVEMENT DISTRICT NUMBER ONE,
Respondent.
No. 859.

MOTIONS FOR PERMISSION TO FILE BRIEFS AND AMICUS CURIAE BRIEF.

MOTION OF R. L. WARD TO FILE AMICUS CURIAE BRIEF.

Comes now R. L. Ward, of the firm of Ward & Reeves, of Caruthersville, Pemiscot County, Missouri, and represents and shows to the Court that he and his firm are the attorneys for the following municipal corporations, to wit:

(a) St. Francis Levee District of Missouri, a municipal corporation, whose territory embraces all of Pemiscot County, Missouri, and a large acreage in New Madrid County and in Dunklin County, Missouri.

(b) Drainage District No. 8 of Pemiscot County, Missouri, a drainage district whose territory embraces 67,000 acres of land in said county.

(c) Drainage District No. 6 of Pemiscot County, Missouri, a drainage district whose territory embraces 82,000 acres of land in said county.

That each of the above enumerated districts are municipal corporations and are insolvent;

That the St. Francis Levee District has more than one million dollars ($1,000,000.00) outstanding bonded indebtedness and of said amount approximately 50 per cent have signed up agreeing to a proposition with the Levee District to accept a refunding settlement wherein the funds are to be furnished by the R. F. C.;

That Drainage District No. 8 aforesaid is insolvent and has a bonded indebtedness of four hundred forty-six thousand dollars ($446,000.00) outstanding, a large portion of which is in default; that it has been granted a loan by the R. F. C. with which to refinance upon a basis of two hundred thousand dollars ($200,000.00), and that 66⅔ per cent of the outstanding bondholders have signed up an agreement to accept said amount, and the district has filed a petition in bankruptcy and the cause is now pending in the federal court of this state;

That Drainage District No. 6 aforesaid has an outstanding indebtedness or five hundred eight thousand dollars ($508,000.00) unpaid outstanding bonds; that more than 66⅔ per cent have signed up an agreement to accept settlement with the district and that in said settlement the R. F. C. has agreed to loan for that purpose the sum of three hundred fifty thousand dollars ($350,000.00), and the bankruptcy action in that district is now pending in said federal court of Missouri;

That it is for the best interest of the bondholders and for each of said districts aforesaid that these settlements

be made, and by making said settlements said districts will be rendered solvent and the bonds will be worth a hundred cents on the dollar;

And that by reason of said above detailed facts each of said municipal districts are vitally interested in the above-entitled case and in the law being declared constitutional; and to that end ask to have permission of this Court to file an amicus curiae brief.

Wherefore, premises considered, the undersigned prays the Court to be permitted to file an amicus curiae brief on behalf of said above designated levee and drainage districts.

R. L. WARD,
Attorney for St. Francis Levee District, Drainage District No. 8 and Drainage District No. 6.

MOTION OF CHAS. CLAFLIN ALLEN, JR., TO FILE AMICUS CURIAE BRIEF.

Now on this day comes Chas. Claflin Allen, Jr., an attorney of St. Louis, Missouri, and represents and shows to the Court as follows:

(1) That he is an attorney at law, duly licensed to practice law in the Supreme Court of Missouri and before this Honorable Court, and that as such an attorney at law he represents owners and holders of more than two million dollars ($2,000,000.00) of the bonds of Drainage Districts Nos. 1, 2, 3, 6, 8 and 9 in Pemiscot County, Missouri, as well as bondholders in other drainage and municipal districts.

(2) That said drainage districts in Pemiscot County, Missouri, have made application to and received resolutions of agreement from the R. F. C. to refinance their outstanding bonded indebtedness; that he represents more than 66⅔ per cent of the outstanding bonded indebtedness of said districts and that his clients have agreed to the compromise adjustment and settlement in said districts; that he and his clients are vitally interested in Section 80 of the Bankrupt Act, particularly in reference to the right and authority of said Drainage Districts and municipal corporations to take advantage of the Bankrupt Act and that he believes said act is constitutional.

Wherefore, as representative of his clients as aforesaid, he moves the Court that he be permitted to file in the cause herein an amicus curiae brief in support of the constitutionality of the Bankrupt Act in controversy.

CHAS. CLAFLIN ALLEN, JR.,
Attorney for Bondholders of Drainage Districts Nos. 1, 2, 3, 6, 8 and 9 of Pemiscot County, Missouri.

BRIEF.

I.

STATEMENT.

Because of the interest of our clients as set out in motions herein to be permitted to file this brief, we are vitally interested in Section 80, Bankrupt Act, in particular Section 303, U. S. C., as added to Section 80 of the Act of May 24, 1934, and after investigation of the law in regard to former holdings of this Court under various matters arising under said section 80, we are convinced that this law is constitutional and herein express to your Honors our views in support of the constitutionality of said act.

II.

THIS ACT DOES NOT VIOLATE THE TENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

(A) The Tenth Amendment provides "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." But the Constitution of the United States itself directly provides "Congress shall have power to establish uniform laws on the subject of bankruptcy throughout the United States."

Sec. 8, Art. I, Constitution of United States.

(B) This constitutes the power of Congress to establish uniform bankruptcy law which is paramount to the powers of the state; is not limited to English or Colonial laws in force when the Constitution was adopted, but must be

interpreted in the light of what is required under modern conditions to deal adequately with relationship existing between embarrassed debtors and their creditors, and is not necessarily limited to that scope which has been heretofore exercised.

Continental Ill. National Bank & Trust Co. v. Chicago, R. I. & P. Ry. Co., 294 U. S. 648 (79 L. Ed. 1110);
U. S. National Bank of Omaha v. Pamp, 77 Fed. (2d) 9;
Campbell v. Allegheny Corp., 75 Fed. (2d) 947 (Cert. denied, 56 S. Ct. 92).

(C) While Congress under pretext of executing such power cannot pass laws dealing with matters not entrusted to national government, yet so long as legislation is fairly within constitutional grant, public policy exemplified therein is exclusively within congressional discretion.

In re Radford, 8 Fed. Supp. 489;
Louisville Joint Stock Land Bank v. Radford, 74 Fed. (2d) 576.

(D) In the exercise of power to pass bankruptcy law and grant exemption pursuant thereto Congress acts free of state laws, and this power of Congress is not diminished by any other provision of the Constitution.

In re Cope, 8 Fed. Supp. 778 (Aff. 8 Fed. Supp. 961).

(E) All bankrupt laws when applied abrogate private contracts; and perforce of the Bankrupt Act legally forces the creditors by bankruptcy or composition and settlement through bankruptcy to accept a less amount from the debtor as a settlement in full than he contracted to

accept. State legislatures cannot force this to be done by law, because their acts would violate the Constitution of the United States, whereby "no state shall pass any law impairing the obligation of contracts"; but Congress may do this.

Sec. 10, Art. I, Constitution of United States;
In re East Contra Costa Irrigation District, 10 Fed. Supp. 175.

The above clause is the limitation on the legislative powers of the state in whatever form it may assume, and the purpose is to preserve sacred the principle of inviolability of contracts against legislative interference, and operates directly upon the states in reference to their legislative functions.

Murray v. Charleston, 96 U. S. 444;
U. S. v. United Shoe Manufacturing Co., 234 Fed. 137.

The United States are not included within the Constitution prohibition, which prevents states from passing laws impairing the obligation of contracts and does not apply to acts of Congress.

Sinking Fund Cases, 99 U. S. 718;
Carter Planing Mill Co. v. New Orleans etc. Ry. Co., 112 Miss. 148 (72 So. 884).

III.

THE BANKRUPT ACT MAY APPLY TO ARMS OF THE STATE SUCH AS MUNICIPAL CORPORATIONS, AS WELL AS INDIVIDUALS.

(A) A county may invoke this act in question.

Carteret Co. v. Sovereign Camp W. O. W., 78 Fed. (2d) 337.

Statute providing for emergency temporary aid of **public debtors** under Bankruptcy Act held not unconstitutional as not within bankruptcy principles.

In re East Contra Costa Irrigation District, 10 Fed. Supp. 175.

(B) This act will be sustained under Article I of Section 8, Constitution of United States, which act authorizes Congress to make all laws necessary and proper; and may place new persons under the law; a law will be passed to meet new condition; and as to drainage and irrigation districts, this law is no usurpation of the state sovereignty because the local government authority is preserved and the private element of the district is sufficiently distinct to bring it in the bankruptcy power.

In re Imperial Irrigation District, 10 Fed. Supp. 832.

(C) The nature and extent of the power of Congress to legislate in regard to bankruptcy is best fixed by a gradual process of historical and judicial inclusion and exclusion, and the judicial interpretation has been uni-

formly in the direction of progressive liberalization in respect to the operation of the bankruptcy power.

Continental Ill. etc. Co. v. C. R. I. & P. R. Co., 294 U. S. 648, l. c. 670-675.

(D) Statutes authorizing political subdivisions of the state to take advantage of the National Bankruptcy Act held not invalid.

In re Imperial Irrigation District, 10 Fed. Supp. 832.

(E) Drainage, levee and irrigation districts are empowered by law to borrow money, issue bonds and to create debts, and thereby become debtors, and the persons or corporations to whom they sell the bonds or from whom they borrow money become their creditors; so that there exists the relation of debtor and creditor as between private corporations, and by such acts they are not performing governmental or "arm of the state" functions, and consequently the Bankrupt Act may be applied to them to permit settlement and composition of their indebtedness without in any way interfering with their governmental powers and duties. And this statute is but a step in the universal growth and application of the Bankrupt Act from its first application, which was confined to traders, to including bankers, brokers and underwriters by the Act of 1880, and to the Act of 1841, which added merchants and other additions until now practically all classes of persons and corporations are included, and all of which "have not gone beyond the limit of congressional power, but, rather, have constituted extensions into a field whose boundaries may not yet be fully revealed."

Continental Ill. etc. Co. v. C. R. I. & P. R. Co., 294 U. S., l. c. 671-675.

ARGUMENT.

I.

The Act in Question Does Not Violate the Tenth Amendment to the Constitution of the United States.

The question here is whether or not the right of a municipal corporation to go into bankruptcy or make settlement with its creditors must be left to the states, or is it a question for Congress? In other words, has Congress violated state rights by incorporating in the Bankrupt Act the addition to Section 80 of the Bankrupt Law, which is known and designated as Section 303, Title 11, U. S. C. A., as passed May 24, 1934.

It appears to us that there are two very convincing reasons why this statute does not violate said Tenth Amendment to the Constitution of the United States, which provides "the power not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people." These two reasons are:

(A) The Constitution, in section 8, article I, does specifically delegate to the Congress of the United States the "power to establish uniform laws on the subject of bankruptcy throughout the United States."

This power so granted to the Congress has been before this Court since the first Bankrupt Act in 1800, and has been given a very liberal construction by the courts. In the case of Continental Illinois National Bank & Trust Company v. C. R. I. & P. Ry. Company, 294 U. S. 648, with five other cases combined in the opinion, this Court, in a very able and exhaustive opinion by Judge Sutherland,

reviews the Bankrupt Law, wherein Section 77 of the Bankrupt Law was declared constitutional, and at page 667 quoted Section 8, Article I of the Constitution, and held that it was not limited to the English Bankrupt Law existing at the time of the adoption of the Constitution. At that time the persons who were permitted to fall within the term of bankruptcy was limited to traders, but this Court, in Waring v. Clark, 5 How. 441, held that the grant extending the "judicial power to all cases of admiralty and maritime jurisdiction" was not limited to, and was not to be interpreted by, what were cases of admiralty jurisdiction in England when the Constitution was adopted." And you then laid down the rule in said case (l. c. 670): "For, like many other provisions of the Constitution, the nature of this power and the extent of it can best be fixed by the gradual process of historical and judicial 'inclusion and exclusion.'"

The first act, that of 1800, ignored the English law so as to include bankers, brokers and underwriters, as well as traders, and the Act of 1841 added merchants and other additions that have been made until now, so you say, "practically all classes of persons and corporations are included." The Bankrupt Act of 1841 took what was then known "as a radical step forward by conferring upon the debtor the right by voluntary petition to surrender his property, with some exceptions, and relieve himself of all future liability in respect to past debts."

As to the Act of 1867, as amended, you say (l. c. 671):

> "The debtor for the first time was permitted, either before or after an adjudication in bankruptcy, to propose terms of composition to his creditors to become binding upon their acceptance by a designated majority and confirmation by the Judge. The fundamental and radically progressive nature of these ex-

tensions becomes apparent upon their mere statement, but all have been judicially approved or accepted as falling within the power conferred by the bankruptcy clause of the Constitution. Taken altogether, they demonstrate in a very striking way the capacity of the bankruptcy clause to meet new conditions as they have been disclosed as a result of the tremendous growth of business and development of human activities from 1800 to the present day. And these acts, far-reaching though they may be, have not gone beyond the limit of congressional power, but rather have constituted extensions into a field whose boundaries may not yet be fully revealed."

And so you held that Section 77 of the Bankrupt Act advances another step in the direction of liberalizing the law on the subject of bankruptcies, and made it apply to reorganization of railroads, saying: "The constitutionality of the old provision for a composition is not open to doubt; that provision was there sustained upon the broad ground that the 'subject of bankruptcies' was nothing less than 'the subject of the relations between an insolvent or nonpaying debtor and his creditors, extending to his and their relief.'"

Therefore, based upon the above eminent authority and other cases upon which it is based, it is clear that the right of any creditor, individual, corporation or municipality, as a debtor to make composition with its creditors is within the right of Congress under Section 8 of Article I of the Constitution of the United States. All over this country are drainage districts, irrigation districts and levee districts. Land values sunk, farming products dwindled, and the lands from which the assessed benefits had to come could not produce enough to meet the obligations. The districts, though being in one sense an arm of the state, yet in the relationship of borrowing money

were merely debtors, and the bondholders or persons who loaned the money were creditors. The debtors couldn't pay; they were insolvent or bankrupt. Bonds were selling at ten or fifteen cents on the dollar in some of these districts. Bondholders wanted to make a composition; the districts wanted to make a settlement and get relief down to such an amount that the new bonds would be worth 100 cents on the dollar and they would be paid as they became due. The bondholders were scattered all over the United States. It was an impossibility to get 100 per cent of them in to a settlement. Some of the bonds are lost, perhaps some destroyed, but they were still outstanding, so that a necessity arose for an extension of the Bankrupt Act so as to get the debtor and the creditors together to make a just and amicable settlement by which all creditors would be treated exactly alike and would be forced to abide. Therefore the law was passed and it is within the terms of the Constitution. It makes a "uniform law on the subect of bankruptcy throughout the United States."

(B) The Tenth Amendment to the Constitution of the United States provides "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." We contend that this power of bankruptcy was directly and specifically delegated to the United States by the Constitution, but we also contend that the states could not pass a constitutional act on the question of bankruptcy to meet the condition in these districts. Section 10 of Article I of the Constitution of the United States provides "no state shall pass any law impairing the obligation of contracts." The contract of these drainage districts, evidenced by the bonds, provided for payment of

100 cents on the dollar with 6 per cent interest (in most cases). The districts couldn't pay that; a large majority of the bondholders wanted to settle; and the districts wanted a composition. If the State Legislature passed an act permitting the payment of less than 100 cents on the dollar with interest, then it would be an impairment of an obligation and therefore would be unconstitutional. That left no legislative body that could give this relief except Congress. State legislation couldn't force bondholders to a composition or settlement of less than face value, but that does not prohibit Congress from passing a law that impairs the obligation of a contract. In the sinking funds cases, decided in 1878 by this Court, you said, in 99 U. S., l. c. 718, in regard to power of the United States: "They (U. S.) are not included within the constitutional prohibition which prevents states from passing laws impairing the obligation of contract." Of course, the United States Congress cannot pass an act depriving one of property without due process of law, but it's always been held that under the Bankrupt Act, where all the creditors are treated alike and all of them given equal participation in the funds of the debtor, that it does not violate the due-process act.

Therefore, the states could not pass this law impairing the obligation of contract and the United States Congress can pass it. It is a reasonable deduction that for Congress to do an act which it had authority to do and which the state had no authority to do, could not be in violation of state rights.

II.

The Bankrupt Act Applies to Municipal Corporations, as Well as to Individuals.

The sole purpose of the Bankrupt Act was to give to the creditors, equally, all that they could get out of the debtor by legal process, or more than they could get out of the debtor by such process, and at the same time to leave the debtor free to make a new start. The fact that an irrigation district, a drainage district or levee district is for some purposes an arm of the state is beside the question here. Its governmental functions or its public functions, its method of operation, etc., has nothing to do with its relation as creditor or debtor. The district borrows money by a sale of its bonds and a lien is placed upon all property within the district to guarantee the payment of the bonds. The property becomes insufficient to do this. The district becomes insolvent; it can't meet its obligations; as a debtor it is bankrupt. There are two parties involved, the debtor, or the district, and the creditor, or bondholders. Railroads can go into bankruptcy, banks placed in the hands of receivers, public utilities of all kinds, not because they are private enterprises or quasi-public enterprises, but because the relation of debtor and creditors obtains, and because it is for the best interest of both the debtor and the creditors that a composition or settlement be made. Yet there is always the existing fact that it will be impossible to get unanimous consent of all creditors for a settlement. And, again, the debtor runs up against the proposition that if he owes $100.00, it is not paid by paying the creditor $50.00. Therefore, there is a great demand for a law that permits a large majority of creditors to settle with the debtor, so that the debtor may carry on and the bonds of the creditors to

the amount of the composition or settlement be made good, and bankruptcy is as necessary and will be on these municipal corporations as upon quasi-public corporations and private corporations.

In Carteret Company v. Sovereign Camp, W. O. W., reported in 78 Fed. (2d) 337, the Circuit Court of Appeals of the Fourth Circuit says:

> "If the county is hopelessly involved in debt it may, with the co-operation of majority in amount of its creditors, invoke provisions of Bankruptcy Act for emergency temporary aid of public debtors, and if unable to secure co-operation of creditors or collect sufficient taxes after proper effort to meet claims of creditors of equal standing with creditor who is suing county, county may obtain relief for itself and its other creditors by supplemental petition, invoking the principles followed in Groner et al. v. U. S., 73 Fed. (2d) 196."

This may have been obiter dictum in that opinion, but it shows the spirit, trend and opinion of the courts to the effect that this law is applicable to public municipal corporations; and in the case of Imperial Irrigation District, 10 Fed. Supp. 832, the Court there held that the law was not invalid because applying to an arm of the state.

In Canada Southern R. Co. v. Gebhard, 109 U. S. 527, we find a case where the mortgage bonds refunded dollar for dollar the principal, but eliminated the interest, and new bonds bore reduced rates, and the time of maturity was extended. Also, the second mortgage bonds admitted by exchange of same mortgage bonds. There was a consent of a large majority of the first mortgage bondholders. The Canadian Act provided for a plan filed in Chancery, and consent of three-fourths was required. This

was passed upon by the Chancery Court in Canada, and one branch of the case came from New York to the Supreme Court, which said (l. c. 536):

> "The confirmation and legalization of 'a scheme of arrangement' under such circumstances is no more than is done in bankruptcy when a 'composition' agreement with the bankrupt debtor, if assented to by the required majority of creditors, is made binding on the nonassenting minority. In no just sense do such governmental regulations deprive a person of his property without due process of law. They simply require each individual to conduct himself for the general good as not unnecessarily to injure another. Bankrupt laws have been in force in England for more than three centuries, and they had their origin in the Roman law. The Constitution expressly empowers the Congress of the United States to establish such laws. Every member of a political community must necessarily part with some of the rights which, as an individual, not affected by his relation to others, he might have retained. Such concessions make up the consideration he gives for the obligation of the body politic to protect him in life, liberty and property. Bankrupt laws, whatever may be the form they assume, are of that character. * * * It (plan for confirmation) is in entire harmony with the Constitution of the United States, which, although prohibiting states from passing laws impairing obligation of contracts, allows Congress 'to establish uniform laws on the subject of bankruptcy through the United States.' Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized the scheme may fail. All home creditors can be bound. What is needed is to bind those who are abroad. Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized in other countries."

We find in Continental Ill. etc. Co. v. C. R. I. & P. Ry. Co., 294 U. S., l. c. 675, this Court saying in regard to the above opinion, it is unnecessary to consider the criticism sometimes made that these excerpts are dicta merely, since we are of opinion that they are sound in principle.

Therefore, we submit that there is no rule of the appellate courts and no reason for a ruling that the drainage districts, irrigation districts or levee districts should not have the right and cannot have the constitutional right of the benefit of the Bankrupt Act, and we submit that this act should be declared constitutional.

Respectfully submitted,

R. L. WARD,
Caruthersville, Mo.,
Counselor for Drainage Districts Nos. Six and Eight in Pemiscot County, Missouri, and St. Francis Levee District of Missouri.

CHAS. CLAFLIN ALLEN, JR.,
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FILE COPY

APR 28
CHARLES ELMORE

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1935

No. 859

C. L. ASHTON, et al.,
Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. 1,
Respondent.

BRIEF FOR AMICI CURIAE.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1935

No. 859

C. L. ASHTON, et al.,
Petitioners,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. 1,
Respondent.

BRIEF FOR AMICI CURIAE.

Two appeals are pending in the United States Circuit Court of Appeals for the Ninth Circuit from decrees entered under the provisions of Section 80 of the National Bankruptcy Act. Pursuant to these decrees readjustments have been effected as to the bonded indebtedness of the Merced Irrigation District [1] (aggre-

1. C. C. A. 9th Circuit, In re Merced Irrigation District, No. 8165; appeal from the decision of the Hon. George Cosgrave, District Judge; unreported.

gating $16,190,000) and of the Imperial Irrigation District [2] (aggregating $14,250,000) respectively.

Numerous other cases are pending in the United States District Courts for the Northern and Southern Districts of California involving the readjustment of the indebtedness of irrigation districts [3] and reclamation districts [4]—taxing districts, organized under the laws of the State of California.[5] The State Legislature, recognizing the necessity for relief from the burden of indebtedness incurred by these districts, passed an enabling act in effect September 20, 1934 (California Statutes, 1935—Extra Session 1934, page 5)[6] authorizing taxing districts to avail themselves of the provisions of Section 80 of the National Bankruptcy Act. The emergency declaration attached to this Act constitutes a legislative finding of the facts existing in this State which renders essential the exercise by taxing districts of the provisions of the National Bankruptcy Act, viz.:

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2. C. C. A. 9th Circuit, In re Imperial Irrigation District, No. 7970; appeal from the decision of the Hon. P. J. McCormick, District Judge; reported in *In re Imperial Irrigation District*, 10 Fed. Supp. 832.

3. The California Irrigation District Act under which irrigation districts may be organized in California was sustained in *Fallbrook Irrigation District v. Bradley*, 164 U. S. 112, 41 L. ed. 369, 17 S. Ct. 56.

4. The statutes under which reclamation districts may be organized in California was sustained by the United States Supreme Court in *Hagar v. Reclamation District*, 111 U. S. 701, 28 L. ed. 569, 4 S. Ct. 663.

5. Proceedings are also pending in the District Courts of this Circuit with respect to Plans of Readjustment presented by Banta-Carbona Irrigation District, East Contra Costa Irrigation District, El Dorado Irrigation District, Lindsay-Strathmore Irrigation District, Oroville-Wyandotte Irrigation District, Oakdale Irrigation District, Paradise Irrigation District, Palo Verde Irrigation District, Pescadero Reclamation District No. 2058, San Dieguito Irrigation District, Santa Fe Irrigation District, South San Joaquin Irrigation District, Vista Irrigation District and the Waterford Irrigation District.

Petitions under Section 80 of the National Bankruptcy Act are about to be filed by Beaumont Irrigation District, Corcoran Irrigation District and the Glenn-Colusa Irrigation District.

6. This Act is set forth in Appendix "A" hereof.

"Sec. 13. This act is hereby declared to be an urgency measure within the meaning of section 1 of Article IV of the Constitution, necessary for the immediate preservation of the public peace, health and safety, and shall take effect immediately.

The facts constituting such necessity are as follows: There exist throughout the State of California economic conditions which make it impossible for property owners to pay their taxes and special assessments levied upon real or taxable property. The burden of such taxes and special assessments is so onerous in amount that great delinquencies have occurred in the collection thereof and seriously affect the ability of taxing districts to obtain the revenue necessary to conduct governmental functions and to pay obligations represented by bonds. It is essential that financial relief, as set forth in this act, be immediately afforded to such taxing districts in order to avoid serious impairment of their taxing systems, with consequent crippling of the local governmental functions of the State. This act will aid in accomplishing this necessary result and should therefore go into effect immediately."

Article I, Section 10, of the Federal Constitution providing that no State shall pass any law impairing the obligation of contracts, constitutes an insurmountable bar to State legislative assistance to distressed taxing districts. That the condition in California is not solely a matter of local concern is indicated by the Report of the Congressional Committee which recommended the adoption of Section 80 and by the relief

which has been extended by the Reconstruction Finance Corporation to drainage, levee, irrigation and reclamation districts throughout the United States pursuant to appropriations made by Congress for this purpose.

The purpose and effect of Section 80 are stated in the Report of the House Judiciary Committee, June 7, 1933 (C. C. H.—Bankruptcy Law Service, Par. 2802 Subpar. .02), as follows:

> "The controlling purpose of the bill is to provide a forum where distressed cities, counties, and minor political subdivisions, designated in the bill as 'taxing districts', of their own volition, free from all coercion, may meet with their creditors under the necessary judicial control and assistance in an effort to effect an adjustment of their financial matters upon a plan deemed mutually advantageous. If a plan is agreed upon by the taxing district and its creditors holding two-thirds in amount of the claims of each class of indebtedness, and if the court is satisfied that the plan is workable and equitable, it may confirm the plan, and the minority creditors are bound thereby."

The purpose of the legislation is to subordinate the demands of the minority creditors to the wishes of the majority, to force a recalcitrant minority to accept that which is for their own best interests and to enable governmental agencies to function and to continue to discharge their governmental obligations.

While the Bankruptcy Act is designated primarily for the relief of debtors, experience has proved that only through the medium of Section 80 can the holders

of bonds and other securities of distressed taxing districts secure an adequate remedy for the effective readjustment of their own defaulted securities. Prior to the enactment of Section 80 the bondholders found that the exercise of their strict legal remedies aggravated rather than cured the condition of default. Increased or pyramided tax levies upon land which did not have the capacity to pay the original indebtedness inevitably forced further defaults. Voluntary plans of readjustment were never effective against the usual minority groups. The physical assets of a public taxing district —at least in California—cannot be taken under execution and public funds cannot be seized by garnishment or attachment.[7] The sole source from which the indebtedness of the taxing district may be paid is by the collection of taxes levied upon the land.[8] The economic law—when taxes exceed the value of the land they cannot be collected—has brought disaster to the bondholders, as well as ruin to the districts, the operation and maintenance of whose improvement works for supplying water or providing flood control or reclamation are likewise dependent upon the collection of taxes levied and assessed upon the lands. Minority bondholders by compelling, as they have the legal right to do, the annual assessment of additional taxes upon the

7. *Rialto Irrigation District v. Stovell*, 246 Fed. 294;
Norris v. Montezuma, 248 Fed. 369;
C. J. Kuback v. City of Long Beach, 82 Cal. App. Dec. 452. 48 P. (2d) 181;
People v. Honey Lake Valley Irr. Dist., 77 Cal. App. 367, 246 Pac. 819;
Hensley v. Reclamation Dist., 121 Cal. 96, 53 Pac. 401.

8. *Nevada National Bank v. Poso Irrigation Dist.*, 140 Cal. 344, 73 Pac. 1056;
Thompson v. Perris Irrigation Dist., 116 Fed. 769;
Perris Irrigation Dist. v. Thompson, 116 Fed. 832;
Marra v. San Jacinto & Pleasant Valley Irr. Dist., 131 Fed. 780.

land to meet delinquencies in the payment of district indebtedness have inevitably brought about a complete breakdown in the tax collecting ability of the districts, thereby depriving all of the security holders of their sole source of income applicable to the payment of the district indebtedness. The result is that large areas of land in California have been forced off of the tax roll and while in public ownership are incapable of producing revenues. Unless plans of readjustment and refinancing can be made effective under the provisions of Section 80 of the National Bankruptcy Act, it is only a question of time, with respect to many of these districts, when they will become wholly unable to produce any substantial amount of revenue for the payment of their bonded debts. The same reasons which impelled the Congress to enact Section 77, relating to reorganization of railroads, and Section 77B, relating to reorganization of corporations, apply with equal force to taxing districts. Defaults by taxing districts in substantially all cases can be traced to the same cause —inability to collect taxes levied upon the lands in the district due to the overwhelming burden of the tax necessary to meet the indebtedness. Readjustments and plans of reorganization all involve the essential element of concessions by the bondholder, either (a) by postponing the time of payment of the indebtedness, or (b) by scaling the amount of the indebtedness to a point within the capacity of the land to pay.

The plan of readjustment of the Imperial Irrigation District essentially involved postponement of the time of payment of serial bonds over a fifty-year period, the

postponement being accomplished by exchange of refunding bonds maturing January 1, 1983 for substantially all of the then outstanding serial bonds.

The plan of readjustment of the Merced Irrigation District essentially involved a cash payment of $515.01 per $1000 of outstanding bonds (reducing the total indebtedness by approximately 50% and the interest rates from 5½% and 6% to 4%), the funds being derived through a loan to the District from the Reconstruction Finance Corporation for this purpose.

In both cases the readjustments were assented to by the holders of approximately 90% of the outstanding bonds before the respective District Courts were asked to determine that the plans were "fair, equitable and for the best interest of creditors."

We submit that Section 80 of the National Bankruptcy Act is a law on the subject of bankruptcies passed under the express power conferred by the States upon the Congress of the United States and is therefore a law directly authorized by the Constitution and is not in violation thereof.

I.

SECTION 80 OF THE NATIONAL BANKRUPTCY ACT IS A UNIFORM LAW ON THE SUBJECT OF BANKRUPTCIES.

Territorial uniformity obviously exists by the very terms of the Act which is applicable to taxing districts of every kind or nature, wheresoever located through-

out the United States.[9] The section essentially authorizes a composition of creditors through a "plan of readjustment" approved by the Court and assented to both by the taxing district and by more than the usual majority of creditors. No taxing district can be forced to accept a plan of readjustment. No creditor is bound until a sufficient majority accepts the composition. A composition of creditors is clearly a law on the subject of bankruptcy, and the constitutional grant of power does not require the surrender of the debtor's assets as a condition to such composition.

Continental Illinois National Bk. & Tr. Co. v. Chicago R. I. & P. Ry. Co., 294 U. S. 648, 55 S. Ct. 595, 79 L. ed. 1110.

No arbitrary plan is prescribed by the statute as a condition precedent to any proposed plan of readjustment and the coercive and arbitrary features of the legislation condemned by this Court in

Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 79 L. ed. 1593, 55 S. Ct. 854,

are wholly absent.[10] On the contrary, no plan can be confirmed until a Court of the United States has found

9. *Hanover National Bank v. Moyses*, 186 U. S. 181, 22 S. Ct. 857, 46 L. ed. 1113.

10. In a footnote to this case this Court said:
"The principle of composition was first applied to the interests of secured creditors in their security, by section 74, added to the Bankruptcy Act, by Act of March 3, 1933, c. 204, Sec. 1, 47 Stat. 1467, see 11 USCA Sec. 202 (individual debtors); by section 75, Act of March 3, 1933, c. 204, Sec. 1, 47 Stat. 1470, see 11 USCA Sec. 203 (agricultural compositions); by section 77, Act of March 3, 1933, c. 204, Sec. 1, 47 Stat. 1474, 11 USCA Sec. 205 (railroads engaged in interstate commerce); by section 77B, Act of June 7, 1934, c. 424, Sec. 1, 48 Stat. 912, 11 USCA Sec. 207 (corporations); *and by section 80, as added by Act of May 24, 1934, c. 345, 48 Stat. 798, 11 USCA Sec. 303 (public debtors)*. The constitutionality of such provision in section 74 was considered in *Re Landquist* (C. C. A.), 70 F. (2d) 929, 933" (italics ours).

that it is "*fair, equitable and for the best interests of the creditors, and does not discriminate unfairly in favor of any class of creditors,*" and further that the plan has been accepted and approved by both the requisite number of creditors and by the taxing district, and further that the "*offer of the plan and its acceptance are in good faith.*"

Section 80 therefore satisfies the due process clause of the Fifth Amendment of the Constitution by the provision for voluntary consent of all parties to the composition and by the further requirement of a hearing and of findings by the trial Court on the fairness of the proposed composition before it can be made binding upon the dissenters.[11]

II.

SECTION 80 OF THE NATIONAL BANKRUPTCY ACT DOES NOT INVADE THE SOVEREIGN POWERS OF ANY STATE NOR INFRINGE UPON STATE RIGHTS GUARANTEED BY THE TENTH AMENDMENT TO THE CONSTITUTION.

1. Section 80 expressly preserves the "sovereign rights" of the States.

Section 80 confers a *limited* jurisdiction upon the United States Courts in Bankruptcy for the purpose of enabling a taxing district to secure a discharge from debts and liabilities dealt with in the plan of readjustment and for the purpose of making the plan binding upon all creditors affected thereby. Jurisdiction can only be acquired over taxing districts which are unable

11. *Campbell v. Alleghany Corp.*, 75 F. (2d) 947; certiorari denied 296 U. S. ..., 80 L. ed. (Adv. Op.) 104, 56 S. Ct. 92.

to pay their debts as they mature. The plan of readjustment which the Court is authorized to confirm must include provisions modifying or altering the *rights of creditors* of the taxing district. No plan of readjustment can be confirmed until the trial Court is satisfied that the *"taxing district is authorized by law, upon confirmation of the plan, to take all action necessary to carry out the plan."* In the exercise of this limited jurisdiction the sovereign power of the State is protected and safeguarded by the provisions of Section 80, which first: reserves to the State its governmental and political powers over its taxing districts; second: requires the approval of State fiscal agencies, if any, to any proceedings instituted under the section by State taxing districts; third: prohibits the Federal Court from interfering with the governmental or political powers of taxing districts; and fourth: protects the political and governmental functions of a taxing district by excepting from the definition of the term "creditors" all claims "for salaries and wages of officers and employees of the taxing district." (National Bankruptcy Act, Sec. 80, subpar. (b).)

> "Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any political subdivision thereof in the exercise of its political or governmental powers, including expenditures therefor, and including the power to require the approval by any governmental agency of the State of the filing of any petition hereunder and of any plan of readjustment, and whenever there shall exist or shall hereafter be created under the law of any State any agency of such

State authorized to exercise supervision or control over the fiscal affairs of all or any political subdivisions thereof, and whenever such agency has assumed such supervision or control over any political subdivision, then no petition of such political subdivision may be received hereunder unless accompanied by the written approval of such agency, and no plan of readjustment shall be put into temporary effect or finally confirmed without the written approval of such agency of such plans." (National Bankruptcy Act, Sec. 80, subpar. (k).)

"* * * but (11) shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the taxing district, or (b) any of the property or revenues of the taxing district necessary in the opinion of the judge for essential governmental purposes, or (c) any income-producing property, unless the plan of readjustment so provides." (National Bankruptcy Act, Sec. 80, subpar. (c).)

2. Section 80 in its effective operation is limited to matters over which the "sovereign rights" of States cannot extend.

In its effective operation Section 80 merely confirms to taxing districts the accomplishment of powers conferred upon them by the States. The sovereign power of the State extends to the creation of indebtedness by taxing districts and the payment of that indebtedness by taxes upon the taxable property in the district. The sovereign power of the State cannot extend to the alteration, compromise or adjustment of indebtedness once outstanding and in the hands of private holders—at least against their will—for the States are forbidden

by Section 10 of Article I of the Constitution, to impair the obligation of a contract lawfully created. There is no such limitation upon the authority of the Federal Government. The relief to taxing districts under Section 80 follows an express grant of authority to Congress to pass laws on the subject of bankruptcies and is, therefore, incidental in its operation to the sovereignty of the State which authorized the creation of the indebtedness to be readjusted.

Section 80 operates directly upon the rights of *creditors*—a field of action forbidden to the States. Against the taxing district it operates only to discharge debts readjusted under the plan *approved jointly by the creditors and the district and confirmed by the Federal Court.* In a field where no "state sovereignty" exists, it cannot be said to be "impaired" by a law the power to enact which is vested exclusively in Congress. In the cases which have been decided by this Court a clear distinction has been made between the encroachment upon what is sometimes referred to as sovereign, governmental or political powers which are attributes of sovereignty itself and what may be called the other functions of the governmental entity. These decisions deal almost entirely with tax questions where it is conceded that both the National Government and the State have co-ordinate powers. Even in this class of cases, however, taxes have been repeatedly upheld notwithstanding that they relate to or concern governmental agencies, so long as they do not impair or impede the exercise of sovereign or governmental rights. There is nothing in Section 80 which can be said to substan-

tially burden or interfere with any of the governmental powers of the taxing agencies.

In *Willcuts v. Bunn*, 282 U. S. 216, 51 S. Ct. 125, 75 L. ed. 304, where a Federal income tax on profits resulting from resale of municipal bonds was upheld, this Court said (page 230):

> "* * * No facts as to actual consequences are brought to our attention showing any appreciable burden upon the state's borrowing power."

In another case in which the right of the Federal Government to tax the salary of an individual employed as a consulting engineer by a State was upheld it was stated that:

> *"The extent of the exemption must finally depend upon the effect of the tax upon the functions of the government alleged to be affected by it."*
>
> *Metcalf & Eddy v. Mitchell* (1926), 269 U. S. 514, 524, 46 S. Ct. 172, 70 L. ed. 384,

and see

> 35 *Columbia Law Review* (1935), pp. 434, 435.

It certainly cannot be held that the readjustment of municipal obligations is a substantial burden on or interference with the governmental functions of the State, within the line of cases just referred to. A favorable debt readjustment would appear to foster effective governmental operation rather than to impair it. The argument that such a procedure would impair the borrowing power of municipalities overlooks the fact that under present chaotic business conditions, a creditor's right to full reimbursement is purely

theoretical. A readjustment of the debt burden to a point where satisfaction of existing bond obligations becomes presently possible would present a clear slate for future financing.

III.

IF SOVEREIGN RIGHTS OF THE STATE OF TEXAS ARE INVADED BY SECTION 80 OF THE NATIONAL BANKRUPTCY ACT THE INVASION IS BY CONSENT OF THE STATE.

Assuming that the State sovereignty is invaded by Section 80 of the National Bankruptcy Act, the invasion in the case before the Court is by consent of the State of Texas as evidenced by its enabling act (General and Special Laws of Texas, Regular Session 1935, page 293, Chap. 107; Vernon's Annotated Revised Civil Statutes of Texas, 1935 Supplement Article 1024).

The California Statute set forth in the Appendix hereof likewise constitutes a consent by the State of California to whatever impairment of its "sovereign rights" may be brought about by the institution of proceedings under Section 80 by taxing districts organized under the laws of this State. The doctrine of sovereign rights includes the right of waiver by the "sovereign". Section 80 of the National Bankruptcy Act is not compulsory. It extends to taxing districts a privilege accorded to other debtors by the Bankruptcy Act of which they may or may not elect to avail themselves.

Despite direct prohibition against the entertainment by the Federal Courts of suits brought by individuals against States (Eleventh Amendment) it is well settled that a State may waive its immunity and sovereignty by voluntary appearance in such an action.

Clark v. Barnard, 108 U. S. 436, 2 S. Ct. 878, 27 L. ed. 780;

Gunter v. Atlantic Coast Line, 200 U. S. 273, 26 S. Ct. 252, 50 L. ed. 477;

Hagood v. Southern, 117 U. S. 52, 6 S. Ct. 608, 29 L. ed. 805.

These decisions involve a direct constitutional prohibition against the exercise of Federal jurisdiction but it is nevertheless held such jurisdiction attaches in any case in which the State directly or indirectly waives its sovereign immunity.

It would seem clear that either the State or the Federal Government may waive their respective sovereignties and consent to legislation which without such consent would be unconstitutional. Thus, State legislation taking advantage of the consent of Congress with reference to regulations concerning intoxicating liquor when imported into a State, has been held constitutional.

Pabst Brewing Co. v. Crenshaw, 198 U. S. 17, 25 S. Ct. 552, 49 L. ed. 925.

If the amendment transgresses rights reserved to the States, the consent on the part of the State is a waiver thereof. The United States may waive its own sovereign immunity from taxation by the States.

In *Baltimore National Bank v. State Commission of Maryland,* ..... U. S. ....., 80 L. ed. (Adv. Op.) 388, 56 S. Ct. 417, holding that national bank shares owned by the Reconstruction Finance Corporation may be taxed, this Court says:

> "* * * We assume, though without deciding even by indirection, that within M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579, a corporation so conceived and operated is an instrumentality of government without distinction in that regard between one activity and another. *Even on that assumption taxation by state or municipality may overpass the usual limits if the consent of the United States has removed the barriers or lowered them.*" (Italics ours.)
>
> *Owensboro v. Owensboro National Bank,* 173 U. S. 664, 43 L. ed. 850, 19 S. Ct. 875.

If Section 80 was enacted with the ulterior purpose of tempting the States to yield their sovereignty, that purpose may be effectively frustrated by the simple expedient of not yielding.

> *Massachusetts v. Mellon,* 262 U. S. 447, 43 S. Ct. 597, 67 L. ed. 1078.

IV.

THE BANKRUPTCY POWER VESTED IN THE FEDERAL GOVERNMENT MAY BE EXERCISED IRRESPECTIVE OF SOVEREIGN RIGHTS OF THE STATES.

To the extent that powers are expressly conferred upon the Federal Government the Tenth Amendment of the Constitution is wholly inapplicable.

Ashwander v. Tennessee Valley Authority, ... U. S. ....., 80 L. ed. (Adv. Op.) 427, 56 S. Ct. 466.

It has been held many times by this Court that the sovereign rights and powers of the States are subject and subordinate to and need not be considered in connection with the regulations of Congress in the undoubted exercise of its war power, the power to coin money and fix the value thereof, power over interstate commerce, and bankruptcy itself.

A. Bankruptcies.

The sovereign right of States to levy taxes upon property within their territorial jurisdictions is subject to the operation of the Bankruptcy Act. Property administered by a Federal Court in bankruptcy may be sold free and clear of the lien of a State tax.

Van Huffel v. Harkelrode, 284 U. S. 225, 52 S. Ct. 115, 76 L. ed. 256.

When a State is a creditor of a bankrupt it must file its claim within the time provided in the Bankruptcy Act. If the State's claim is not on file within that time it cannot be enforced and the bankrupt's discharge will be a release therefrom.

In *New York v. Irving Trust Co.* (1933), 288 U. S. 329, 77 L. ed. 815, 53 S. Ct. 389, it was said (page 333):

"If a state desires to participate in the assets of a bankrupt, she must submit to *appropriate requirements by the controlling power*" (Congress). (Italics ours.)

B. Interstate commerce.

Railroads owned and operated by States in the exercise of their sovereign powers are subject to the jurisdiction of the Interstate Commerce Commission and to such rates as may be enforced by an instrumentality of the United States acting under an authority of Congress to regulate interstate commerce.

Cincinnati N. O. & Texas Pac. Railway v. Interstate Commerce Commission, 162 U. S. 184, 40 L. ed. 935, 16 S. Ct. 700;

Interstate Commerce Commission v. Detroit etc. Railway Co., 167 U. S. 633, 42 L. ed. 317, 17 S. Ct. 919; and

South Carolina v. United States, 199 U. S. 437, 50 L. ed. 261, 26 S. Ct. 110.

Furthermore State legislation affecting interstate commerce must yield to subsequent acts of Congress enacted under the sole and exclusive right to regulate interstate commerce conferred upon Congress by the Federal Constitution.

In *Board of Trustees of University of Ill. v. United States*, 289 U. S. 48, 77 L. ed. 1025, 53 S. Ct. 509, this Court said at page 57 of 289 U. S.:

"The principle of duality in our system of government does not touch the authority of the Congress in the regulation of foreign commerce."

In the case of *New York v. United States* (1922), 257 U. S. 591, 42 S. Ct. 239, 66 L. ed. 385, it was held that a ruling of the Interstate Commerce Commission increasing the rates to be charged by certain railroads doing business in the State of New York was constitutional irrespective of the fact that the State of New York had previously entered into express contracts with such railroads by which the latter were bound to charge much lower rates for service performed within the State.

C. Power to coin money and to regulate the value thereof.

Acting under its express authority Congress may strike down contracts of sovereign States and their political subdivisions by prohibiting and rendering invalid the obligation to pay in gold coin of the United States debts previously incurred.

In *Norman v. Baltimore & Ohio R. R.*, 294 U. S. 240, 79 L. ed. 885, 55 S. Ct. 407, it was said:

> "The instant cases involve contracts between private parties, but the question necessarily relates as well to the contracts or obligations of States and municipalities, or of their political subdivision, that is, to such engagements as are within the reach of the applicable national power." (294 U. S. 306.)
>
> * * * * * * *
>
> "If the gold clauses now before us interfere with the policy of the Congress in the exercise of that authority they cannot stand." (294 U. S. 311.)
>
> * * * * * * *

"And if the Congress would have that power in the absence of gold clauses, principles beyond dispute compel the conclusion that private parties, or States or municipalities, by making such contracts could not prevent or embarrass its exercise. In that view of the import of the gold clauses, their obstructive character is clear." (294 U. S. 313, 314.)

* * * * * * *

"The contention that these gold clauses are valid contracts and cannot be struck down proceeds upon the assumption that private parties, and States and municipalities, may make and enforce contracts which may limit that authority. Dismissing t' [illegible]enable assumption, the facts must be faced. We think that it is clearly shown that these clauses interfere with the exertion of the power granted to the Congress and certainly it is not established that the Congress arbitrarily or capriciously decided that such an interference existed." (294 U. S. 316.)

D. War Power.

This Court has held that under the "war power" Congress is authorized to regulate even *intrastate* commerce. (See *Northern Pacific R. R. Co. v. North Dakota* (1919), 250 U. S. 135, 39 S. Ct. 502, 63 L. ed. 897.)

State rights must yield to the exercise of an express power granted to Congress by the terms of the Constitution. The theory of dual sovereignty is one which is not expressed in the Constitution but is only to be implied from its terms. It is therefore a doctrine arising by implication which must yield in every instance if it

conflicts with the power expressly granted, reserved or limited by the terms of the Constitution.

We submit that the bankruptcy power should be classified with those other powers of the National Government whose plenary nature renders them invulnerable to objections based on State sovereignty. (35 *Columbia Law Review*, p. 434.)

One of the primary reasons behind the decisions of this Court to the effect that the question of State sovereignty need not be considered in the exercise by Congress of its commerce, currency and military powers is the fact that uniformity of legislation with respect to such matters is essential. (See 2 *Willoughby Constitutional Law of the United States*, 2d Ed., 1929, Sec. 415.) It is obvious that uniformity of bankruptcy legislation is similarly requisite, and, indeed, such uniformity is expressly enjoined by the Constitution (Art. I, Sec. 9, Clause 4).

It is true that the exercise by Congress of one of its primary powers, i. e., taxation, has been on several occasions restricted by this Court in order to prevent Congress from completely impairing or destroying the sovereignty of the several States.

See:

Indian Motorcycle Co. v. United States (1931), 283 U. S. 570, 51 S. Ct. 601, 75 L. ed. 1227;

Pollock v. The Farmers Loan & Trust Co. (1895), 157 U. S. 429, 584, 15 S. Ct. 673, 39 L. ed. 759.

However, from the very nature of taxation, it is obvious that the power to tax was not entrusted to the Fed-

eral Government to enable it to impose a uniform system of taxation on the nation. Taxation is a power inherent in a sovereign, providing the necessary wherewithal to its existence, and necessarily was made available equally to the States and to the Federal Government independently of its exercise by one or the other. (*Gibbons v. Ogden,* 9 Wheat. 1, 199 (U. S. 1824).) In *McCulloch v. State of Maryland,* 4 Wheat. 316, 4 L. ed. 579, it is said (4 L. ed. 606):

> "That the power of taxation is one of vital importance; that it is retained by the states; that it is not abridged by the grant of a similar power to the government of the Union; that it is to be concurrently exercised by the two governments; are truths which have never been denied."

This is said to be the only case in which a power granted to Congress expressly by the Constitution, and not expressly limited therein, has been limited by the Courts in order to protect the sovereignty of the States. See:

33 *Columbia Law Review* (1933), 913, 914.

There is no similarity between the power of taxation and the bankruptcy power. Congress has been restricted to some extent in the exercise of its taxing power because, as has been said, the very nature of taxation, furnishing, as it does, the means of supplying a sovereign with the necessary wherewithal for existence, requires that in the dual system of government the power of each sovereign to tax must not be fettered by the other sovereign. However, a consideration of the bankruptcy power reveals that this element is completely lacking therein. The "contracts" clause of the

Constitution (Art. I, Sec. 10, Clause 1) specifically prohibits the States from enacting bankruptcy legislation by forbidding them the right to impair the obligations of contracts. Therefore, the whole basis for this particular distinction between the restricted tax power and the plenary currency, commerce and military powers is non-existent in the case of bankruptcy power.

A further reason for classifying the bankruptcy power with the commerce, currency and military powers, rather than with the taxing power, is the very necessity for uniformity which is required by the bankruptcy clause of the Constitution and which, as has been stated, is the primary basis for holding the commerce, currency and military powers of Congress to be plenary and invulnerable to objections based on State sovereignty.

In addition, it has been previously said by this Court that the bankruptcy power of Congress is "unrestricted and paramount". (*International Shoe Co. v. Pinkus* (1929), 278 U. S. 261, 265, 49 S. Ct. 108, 73 L. ed. 318.) In the case of *In re Reiman,* Fed. Case No. 11,673, which is the leading case on compositions in bankruptcy and which was cited with approval in *Continental Illinois Nat. Bank & Trust Co. v. Chicago R. I. & P. Ry. Co.,* 294 U. S. 648, 79 L. ed. 1110, 55 S. Ct. 595, it is said:

> "* * * that the power to establish laws on 'the subject of bankruptcies' gives an authority over the subject, that is not restricted by the limitation found in the English Statutes in force when the Constitution was adopted. *The power given must,*

indeed, be held to be general, unlimited and unrestricted over the subject." (Italics ours.)

CONCLUSION.

In conclusion we submit that Section 80 of the National Bankruptcy Act is a valid law on the subject of bankruptcies; that it provides for a voluntary composition of creditors and that it does not in any respect impair the sovereign powers reserved to the States.

Dated, San Francisco, California,
April 22, 1936.

Respectfully submitted,
STEPHEN W. DOWNEY,
Attorney for Merced Irrigation District.
HARRY W. HORTON,
Attorney for Imperial Irrigation District.
GEORGE HERRINGTON,
Attorney for Merced Irrigation District Bondholders' Protective Committee and Imperial Irrigation District Bondholders' Protective Committee.

DOWNEY, BRAND & SEYMOUR,
HORTON & KIRK,
ORRICK, PALMER & DAHLQUIST,
Of Counsel.

(Appendix Follows.)

Appendix

EXTRA SESSION OF 1934.

Assembly Bill No. 12.

CHAPTER 4.

An act in relation to relief from special assessments and in relation to financial relief therefrom, and of taxing districts, as defined in Chapter IX of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended, validating petitions and proceedings under or in contemplation of proceedings under, said Chapter IX, and authorizing contribution by cities and counties toward the payment of such assessments, and declaring the urgency thereof, to take effect immediately.

[Approved by the Governor September 20, 1934.
In effect September 20, 1934.]

The people of the State of California do enact as follows:

Chapter 1. Bankruptcy relief.

SECTION 1. For the purpose of this act a "taxing district" is hereby defined to be a "taxing district" as described in Chapter IX of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States", as approved July 1, 1898, and as amended by the addition thereto of Chapter IX, approved May 24, 1934. Said act of Congress and acts amendatory and supplementary thereto, as the same may be amended from time to time, are herein referred to as the "Federal Bankruptcy Statute".

SEC. 2. All powers herein granted to taxing districts may be exercised by such districts, or, in the event that such districts have no officers of their own, such powers may be exercised by the officers who have the power to contract on behalf of such districts, or to levy special assessments or special taxes within such districts.

SEC. 3. Any taxing district in the State of California is hereby authorized to file the petition mentioned in the Federal Bankruptcy Statute, and to incur and pay the expenses thereof and any and all other expenses necessary or incidental to the consummation of the plan of readjustment contemplated in such petition or as the same may be modified from time to time.

SEC. 4. Before the filing of any petition referred to in section 3 hereof, such taxing district shall adopt a resolution authorizing the filing thereof and authorizing its duly and regularly elected or appointed attorney or special counsel duly appointed for such purpose, to file the same and to represent it in the proceedings with respect thereto in the competent United States District Court.

SEC. 5. Any taxing district is hereby authorized and empowered to take any and all action necessary to carry out any plan of readjustment contemplated in said petition, or as the same may be modified from time to time, subject only to the provisions of the Constitution of the State of California, notwithstanding any other provisions of law.

SEC. 6. No final decree or order of the United States District Court confirming a plan of readjustment shall be effective for the purpose of binding the taxing district unless and until such taxing district files with the court a certified copy of a resolution of such taxing district,

adopted by it or by the officials referred to in section 2 hereof, consenting to the plan of readjustment set forth or referred to in such final decree or order.

SEC. 7. Upon the filing of such certified copy of such resolution, any taxing district shall have power to consummate the plan of readjustment including the following powers:

(a) To cancel in whole or in part, or remit or reduce, the moneys payable under any bonds, warrants or evidences of indebtedness or other obligations of or issued by, such taxing districts, sought to be refunded by such plan of readjustment.

(b) To issue refunding bonds to refund obligations specified in paragraph (5) of this subdivision, subject to the following:

(1) Such obligations may be those of, or issued by, such taxing district, as described in such plan of readjustment. Such refunding bonds shall have such denominations, rates of interest, and maturities, and shall be payable by taxes, special assessment taxes, or special assessments, assessed or levied in the manner provided in such plan of readjustment, except that no such refunding bonds shall exceed in amount, or bear a higher rate of interest than the total obligation sought to be refunded.

(2) In those cases where the bonds sought to be refunded were issued pursuant to statute requiring any election of voters or electors as a prerequisite for the issuance of such bonds, it shall not be necessary to hold any election to authorize the issuance of such refunding bonds except in those cases where refunding bonds are to

be issued by one of the political subdivisions mentioned in section 18 of Article XI of the Constitution. In the latter case:

(I) In the case of cities such election must be held in accordance with the procedure for the holding of an election set forth in an act of the Legislature entitled "An act authorizing the incurring of indebtedness by cities, towns and municipal corporations for municipal improvements, and regulating the acquisition, construction or completion thereof, enacted February 25, 1901, as amended.

The limitations provided by law upon the power of a city to incur a bonded indebtedness not exceeding fifteen (15%) per cent of the total assessed valuation of taxable property in such city shall not apply to any bonded indebtedness issued pursuant to the provision of this act.

(II) In the case of a county, such election must be held in accordance with the procedure for the holding of an election set forth in section 4088 of the Political Code.

(III) In the case of school districts, such election must be held in accordance with the procedure for the holding of an election set forth in sections 4.960 to 4.1063, inclusive, of the School Code.

(3) The refunding bonds need not be payable out of taxes or special assessments levied or assessed in the manner in which the bonds sought to be refunded were payable. By way of illustration of, but not by way of limitation upon, the powers herein granted, bonds payable by taxes levied in whole or in part according to the assessed valuation of real or taxable property in a district, may be refunded by the issuance of refunding bonds so payable or by the issuance of refunding bonds constituting

specific liens upon real property described in such refunding bonds and subject to enforcement, collection and foreclosure pursuant to the plan of readjustment.

In further illustration hereof but not by way of limitation upon the powers herein granted, any city is hereby authorized to issue such refunding bonds substantially in the manner and form and with the effect provided in the Improvement Act of 1911, such refunding bonds to be payable and to entitle the holders thereof to enforce, foreclose and collect the same, as provided in said Improvement Act of 1911; provided, however, anything to the contrary herein contained notwithstanding, no refunding bonds shall be payable by the levy of taxes or special assessment taxes upon all taxable property in a district, unless the bonds sought to be refunded were payable by the levy of taxes or special assessment taxes upon all taxable property in a district.

(4) It shall be sufficient for the purposes of this act that the petition shall set forth by reference or otherwise:

(I) The procedure to be followed, respectively, in the levy and collection of taxes, special assessment taxes, or special assessments for the payment of such refunding bonds.

(II) The character and effect of, and method of enforcing the liens sought to be created by the issuance of such refunding bonds.

(III) The rights of the holders of such refunding bonds upon the issuance thereof.

(5) The refunding bonds herein authorized shall include bonds to refund bonds secured by unpaid assessments heretofore levied upon real property in a district, and

shall also include bonds to fund or refund or pay any obligation of such taxing district whether reduced to judgment or not and whether represented by any written instrument or not and whether arising by contract, statute or otherwise.

(c) To adopt such ordinances as are necessary to accomplish the purposes of this act or to provide due process of law with respect to any proceedings herein authorized. The officers of such taxing district, or the officers referred to in section 2 hereof, are hereby constituted a legislative body of the taxing district for such purpose.

(d) To assess, levy and collect taxes, special assessment taxes and special assessments and to enforce the collection thereof in the manner and with the effect provided in the plan of readjustment.

(e) In the event that the plan of readjustment contemplates the issuance of refunding bonds payable by special assessment taxes, or by special assessments or reassessments, which will constitute liens upon real property, the taxing district shall not have jurisdiction to adopt the resolution mentioned in section 6 hereof unless, before the issue of the final decree or order confirming the plan of readjustment, it holds a hearing after notice thereof as herein provided. In such event before the signing of the order or decree of the Federal District Court approving the plan of readjustment, the taxing district shall cause to be given a notice, for a reasonable time and in a reasonable manner, of its intention to adopt the resolution mentioned in section 6 hereof after the issue of the final decree or order and of the fact that by the plan of readjustment it is proposed to levy special assessments or reassessments

or special assessment taxes upon real property in the amounts and in the manner set forth in such plan of readjustment and of the time and place when and where all persons interested in any such assessments or reassessments or special assessment taxes will be heard by such taxing district.

(f) The taxing district shall prescribe by ordinance or resolution the manner of holding such hearing and of giving notice thereof and the effect to be given to its determination at such hearing.

(g) To cancel or reduce the taxes or special assessment taxes heretofore levied or assessed by such taxing district or in its behalf upon any taxable or real property within such district, if such levy or assessment was for the purpose of paying the principal or interest on the bonds sought to be refunded by the plan of readjustment, in the manner and as set forth in such plan of readjustment, and the powers herein granted shall include cancellation or reduction of interest, penalties and costs that may be levied or assessed upon such property within such district by reason of any previous delinquency in the payment of such taxes or special assessments.

(h) The provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 shall not be applicable to any proceedings taken under this act.

(i) The above enumeration of power shall not be deemed to exclude powers not herein mentioned that may be necessary for or incidental to the accomplishment of the purposes hereof.

SEC. 7a. Whenever any taxing district has heretofore filed or purported or attempted to file a petition under

Chapter IX of the Federal Bankruptcy Statute or has taken or attempted to take any other proceedings under or in contemplation of proceedings under Chapter IX of the Federal Bankruptcy Statute, all acts and proceedings of such taxing district and of the governing board or body and of public officers of such taxing district in connection with such petition or proceedings, are hereby legalized, ratified, confirmed and declared valid to all intents and purposes and the power of such taxing district to file such petition and take such other proceedings is hereby ratified, confirmed and declared, but all such proceedings taken after the date this act takes effect shall be taken in accordance with and pursuant to this act.

Chapter 2. Relief by contribution from cities or counties.

SEC. 8. Any city or county of the State may finance or assist in the financing of, and may incur indebtedness to finance, or to assist in the financing of, any plan of readjustment mentioned in the Federal Bankruptcy Statute, either for itself as a taxing district, or for any taxing district entirely within, or the exterior boundaries of which are coterminous with the boundaries of, such city, or county. In the case of a city, such indebtedness may be incurred in accordance with the provisions of "An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations for municipal improvements, and regulating the acquisition, construction, or completion thereof", enacted February 25, 1901, as amended. In the case of a county, such indebtedness may be incurred in the manner provided in section 4088 of the Political Code.

SEC. 9. In the event that such plan of readjustment contemplates the incurring of indebtedness under this section,

the petition mentioned in section 3 shall so state, and the final decree or order of the United States District Court shall not be effective for any purpose unless such city or county files in the United States District Court in which the petition is filed a certified copy of a resolution consenting to such plan of readjustment as set forth or mentioned in such final decree or order.

SEC. 10. Such city or county may use in the financing or assistance of the financing of such plan of readjustment any funds that are available therefor including funds described in section 13½ of the Motor Vehicle Fuel License Tax Act, which are hereby specifically authorized to be used therefor, subject to the restrictions contained therein as to the purposes and the proportion of the total moneys received by any county or city and county that may be so used.

Chapter 3. General provisions.

SEC. 11. This act shall in no wise affect any other act or acts now existing or which may hereafter be adopted covering the same subject matter, or apply to any proceedings thereunder, but is intended to and does provide, among other matters, an alternative system for the refunding of bonds, the same to be used pursuant to the provisions of, and in conjunction with the Federal Bankruptcy Statute.

SEC. 12. This act and all of its provisions shall be liberally construed to the end that the purposes hereof may be made effective. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. The Legislature hereby de-

clares that it would have passed this act irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases thereof be declared unconstitutional.

SEC. 13. This act is hereby declared to be an urgency measure within the meaning of section 1 of Article IV of the Constitution, necessary for the immediate preservation of the public peace, health and safety, and shall take effect immediately.

The facts constituting such necessity are as follows: There exist throughout the State of California economic conditions which make it impossible for property owners to pay their taxes and special assessments levied upon real or taxable property. The burden of such taxes and special assessments is so onerous in amount that great delinquencies have occurred in the collection thereof and seriously affect the ability of taxing districts to obtain the revenue necessary to conduct governmental functions and to pay obligations represented by bonds. It is essential that financial relief, as set forth in this act, be immediately afforded to such taxing districts in order to avoid serious impairment of their taxing systems, with consequent crippling of the local governmental functions of the State. This act will aid in accomplishing this necessary result and should therefore go into effect immediately.

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Supreme Court Of The United States

OCTOBER TERM, 1935

NO. 859

C. L. ASHTON, ET AL.,

Appellant,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NUMBER ONE,

Appellee.

Appeal from The United States Circuit of Appeals
For the Fifth Circuit

BRIEF OF AMICUS CURIAE

GEORGE M. CORLETT,
Attorney.

Supreme Court Of The United States

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For the Fifth Circuit

BRIEF OF AMICUS CURIAE

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now George M. Corlett, an attorney at law authorized to practice before this Honorable Court and respectfully prays that he be privileged to submit the follow-

ing comments in the above entitled matter on behalf of several municipal organizations of the State of Colorado which have heretofore taken advantage of the relief privileges provided for under Section 80, Chapter IX of the Municipal Relief Act of May 24, 1934, and particularly on behalf of The San Luis Valley Irrigation District, serving an area of 65,000 acres of land located in the Counties of Rio Grande, Saguache and Alamosa in the State of Colorado; and The Terrace Irrigation District serving 13,000 acres of land located in Rio Grande and Conejos Counties, Colorado, on which proceedings are now pending under the provisions of said Act, before Honorable J. Foster Symes, Judge of the District Court of the United States for the District of Colorado, both public corporations similar in their organization, activities and administration to the Appellee in the case at Bar.

Your orator respectfully seeks the privilege of making a statement as a friend of the Court in support of this Act.

During the period from 1930 up to the present day, many public corporations incident to the partial or complete failure of tax returns upon which such public corporations are entirely dependent, have become so embarrassed financially as to make it impossible for them to longer continue to defray the expense of the operation of the plants maintained by such corporations for the use of the public served thereby.

Many families wholly dependent upon the continued maintenance of irrigation water supply, drainage, or other public service for their sustenance and support, would have been and will become public charges unless arrangements can be made for the refinancing or the financing of the current expenses and obligations of such corporations.

While tax collections during the past several months have materially increased in many sections and particularly in the State of Colorado and more particularly in the area in which The San Luis Valley Irrigation District and The Terrace Irrigation District, above mentioned,

are located, during the period from about the year 1930 up to the present time, accumulation of the defaulted principal and interest on bonded obligations, as well as deficits in maintenance and operation expense, now make it impossible for the districts affected to procure or secure the necessary funds for the actual operation of the plants heretofore operated by such corporations, unless relief can be obtained in such manner as is usually accorded to bankrupts and as provided under Section 80 of the Municipal Relief Act of 1934, and unless some such relief be provided for, many families wholly dependent upon the continued maintenance of such organizations will be thrown out of employment and become public charges of the communities in which they reside or the Nation as a whole.

The necessities are more pronounced than in the case of an individual debtor where one man or one family on failure to meet obligations might be made a public charge, because in the event of the failure of one of these public corporations, a multitude of men, women and children, many of whom are at fault in no way and the remainder of whom are at fault only because of the breaking down or collapse of taxpaying ability incident to conditions over which they have no control, are threatened with want and destitution because some creditor or some few creditors might be unwilling to accept a composition satisfactory to the great majority of the creditors of the taxing district.

We do not attempt to discuss or attempt to advise this Honorable Court on the legal aspects of the case and are unadvised as to the particular issues involved in this case, but do urge that favorable consideration be given this Act on account of the necessities affecting so many families and so many individual citizens, if this Court is able to find that the Act may be legally enforced.

Respectfully submitted,

GEORGE M. CORLETT,
Attorney.

SUPREME COURT OF THE UNITED STATES.

No. 859.—October Term, 1935.

C. L. Ashton, et al., Petitioners,
vs.
Cameron County Water Improvement District No. One.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[May 25, 1936.]

Mr. Justice McReynolds delivered the opinion of the court.

Respondent, a water improvement district embracing 43,000 acres in Cameron County, Texas, was organized in 1914 under the laws of that State. Claiming to be insolvent and unable to meet its debts as they matured, it presented to the United States District Court, December 5, 1934, an Amended Petition with plan for adjusting its obligations—$800,000 six percent bonds. This proposed final settlement of these obligations through payment of 49.8 cents on the dollar out of funds to be borrowed from the Reconstruction Finance Corporation at four percent.

The petition follows and seeks relief under the Act of Congress approved May 24, 1934, c. 345, §§ 78, 79 and 80, 48 Stat. 798; Title 11 U. S. C. A., §§ 301, 302 and 303.* It alleges that more than thirty percent of the bondholders had accepted the plan and ultimately more than two-thirds would do so. The prayer asks confirmation of the proposal and that non assenting bondholders be required to accept it.

Owners of more than five percent of outstanding bonds appeared, said there was no jurisdiction, denied the existence of insolvency, and asked that the petition be held insufficient.

The trial court dismissed the petition for lack of jurisdiction. It held—

The petitioner is a mere agency or instrumentality of the State, created for local exercise of her sovereign power—reclamation of arid land through irrigation. It owns no private property and carries on public business only. The bonds are contracts of the

*Originally, this was limited to two years. By Act approved April 10, 1936, it was extended to January 1, 1940.

State, executed through this agency; and secured by taxes levied upon local property. Congress lacks power to authorize a federal court to readjust obligations, as provided by the Act. Also, the allegations of fact are insufficient.

The Circuit Court of Appeals took the cause, considered the points presented, and held that the allegations were adequate to show jurisdiction and to warrant introduction of evidence. Also that Congress had exercised the power "To establish . . . uniform Laws on the subject of Bankruptcies," granted by § 8, cl. 4, Art. 1 of the Constitution. Accordingly, it reversed the trial court and remanded the cause.

The Act of May 24, 1934 amended the Bankruptcy Act of July 1, 1898, c. 541, 30 Stat. 544, by adding Chapter IX (three sections, 78, 79, 80), captioned "Provisions for the Emergency Temporary Aid of Insolvent Public Debtors and to Preserve the Assets thereof and for other Related Purposes."

Section 78 asserts an emergency rendering imperative further exercise of the bankruptcy powers. Section 79 directs that "in addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in this chapter."

Section 80—long and not free from ambiguities—in twelve paragraphs (a to l) prescribes the mode and conditions under which, when unable to pay its debts as they mature, "any municipality or other political subdivision of any State, including . . . any county, city, borough, village, parish, town, or township, unincorporated tax or special assessment district, and any school, drainage, irrigation, reclamation, levee, sewer, or paving, sanitary, port, improvement or other districts" may effect a readjustment. A brief outline of the salient provisions, with some quotations, will suffice for present purposes.

The petition for relief must be filed in the District Court and submit plan for readjustment approved by creditors holding thirty percent of the obligations to be affected; also complete list of creditors. If satisfied that the petition is in good faith and follows the statute, the judge shall enter an approving order; otherwise, it must be dismissed. Creditors holding five percent of the indebtedness may appear in opposition.

"A plan of readjustment within the meaning of this chapter shall include provisions modifying or altering the rights of creditors generally, or any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; and may contain such other provisions and agreements, not inconsistent with this chapter, as the parties may desire."

Upon approval of the petition, creditors must be notified; if the plan is not seasonably accepted, extension may be granted, etc.

Hearings must be accorded. The judge, with its approval, "may direct the rejection of contracts of the taxing district executory in whole or in part." He may require the district to open its books; allow reasonable compensation; stay suits; enter an interlocutory decree declaring the plan temporarily operative, etc. "But [he] shall not, by any order or decree, in the proceeding or otherwise, interfere with any of the political or governmental powers of the taxing district, or any of the property or revenues of the taxing district necessary in the opinion of the judge for essential governmental purposes, or any income-producing property, unless the plan of readjustment so provides."

After hearing, the judge shall confirm the plan, if satisfied that it is fair, equitable, for the best interests of the creditors, does not unduly discriminate, complies with the statute, and has been accepted by those holding two-thirds of the indebtedness. Also, that expenses incident to the readjustment have been provided for, that both plan and acceptance are in good faith and the district is authorized by law to take all necessary action.

The provisions of the plan, after order of confirmation, shall be binding upon the district and all creditors, secured or unsecured. Final decree shall discharge the district from all debts and liabilities dealt with by the plan, except as otherwise provided.

"(k) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any political subdivision thereof in the exercise of its political or governmental powers, including expenditures therefor, and including the power to require the approval by any governmental agency of the State of the filing of any petition hereunder and of any plan of readjustment, and whenever there shall exist or shall hereafter be created under the law of any State any agency of such State authorized to exercise supervision or control over the

fiscal affairs of all or any political subdivisions thereof, and whenever such agency has assumed such supervision or control over any political subdivision, then no petition of such political subdivision may be received hereunder unless accompanied by the written approval of such agency, and no plan of readjustment shall be put into temporary effect or finally confirmed without the written approval of such agency of such plans."

We need not consider this Act in detail or undertake definitely to classify it. The evident intent was to authorize a federal court to require objecting creditors to accept an offer by a public corporation to compromise, scale down, or repudiate its indebtedness without the surrender of any property whatsoever. The Act has been assailed upon the ground that it is not in any proper sense a law on the subject of bankruptcies and therefore is beyond the power of Congress; also because it conflicts with the Fifth Amendment. Passing these, and other objections, we assume for this discussion that the enactment is adequately related to the general "subject of bankruptcies." See *Hanover National Bank* v. *Moyses*, 186 U. S. 181; *Continental Illinois N. B. & T. Co.* v. *C., R. I. & P. R. Co.*, 294 U. S. 648; *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555.

The respondent was organized in 1914 as Cameron County Irrigation District No. One, to furnish water for irrigation and domestic uses; in 1919, it became the Cameron County Water Improvement District No. One, all as authorized by statutes passed under § 52, Art. 3, Constitution of Texas, which permits creation of political divisions of the State, with power to sue and be sued, issue bonds, levy and collect taxes. An amendment to the Constitution—§ 59a, Art. 16—(October 2, 1917) declares the conservation and development of all the natural resources of the State, including reclamation of lands and their preservation, are "public rights and duties." Most of the bonds now in question were issued during 1914; the remainder in 1919.

By Act approved April 27, 1935, the Texas Legislature declared that municipalities, political subdivisions taxing districts, &c., might proceed under the Act of Congress approved May 24, 1934.

It is plain enough that respondent is a political subdivision of the State, created for the local exercise of her sovereign powers, and that the right to borrow money is essential to its

operations. *Houck* v. *Little River Drainage District*, 239 U. S. 254, 261-262; *Perry* v. *United States*, 294 U. S. 330. Its fiscal affairs are those of the State, not subject to control or interference by the National Government, unless the right so to do is definitely accorded by the Federal Constitution.

The pertinent doctrine, now firmly established, was stated through Mr. Chief Justice Chase in *Texas* v. *White*, 7 Wall. 700, 725.—

> "We have already had occasion to remark at this term, that 'the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence,' and that 'without the States in union, there could be no such political body as the United States.' Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

Collector v. *Day*, 11 Wall. 113, 125, 126—

> "Such being the separate and independent condition of the States in our complex system, as recognized by the Constitution, and the existence of which is so indispensable, that, without them, the general government itself would disappear from the family of nations, it would seem to follow, as a reasonable, if not a necessary consequence, that the means and instrumentalities employed for carrying on the operations of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired; should not be liable to be crippled, much less defeated by the taxing power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax. And, more especially, those means and instrumentalities which are the creation of their sovereign and reserved rights, one of which is the establishment of the judicial department, and the appointment of officers to administer their laws. Without this power, and the exercise of it, we risk nothing in saying that no one of the States under the form of government guaranteed by the Constitution could long preserve its existence."

In *Indian Motocycle Company* v. *United States*, 283 U. S. 570, 575, *et seq.*, relevant cases are collected and the following conclusion announced—

> "This principle is implied from the independence of the National and State governments within their respective spheres and from the provisions of the Constitution which look to the maintenance of the dual system."

Notwithstanding the broad grant of power "to lay and collect taxes," opinions here plainly show that Congress could not levy any tax on the bonds issued by the respondent or upon income derived therefrom. So to do would be an unwarranted interference with fiscal matters of the State—essentials to her existence. Many opinions explain and support this view. In *United States* v. *Railroad Company*, 17 Wall. 322, 329, this court said—

> "A municipal corporation like the city of Baltimore is a representative not only of the State, but is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the State. The State may withdraw these local powers of government at pleasure and may, through its legislature or other appointed channels, govern the local territory as it governs the State at large. It may enlarge or contract its powers or destroy its existence. As a portion of the State in the exercise of a limited portion of the powers of the State, its revenues, like those of the State, are not subject to taxation."

See also *Pollock* v. *Farmers, &c. Co.*, 157 U. S. 429, 586; 158 U. S. 601, 630.

The power "To establish . . . uniform Laws on the subject of Bankruptcies" can have no higher rank or importance in our scheme of government than the power "to lay and collect taxes." Both are granted by the same section of the Constitution, and we find no reason for saying that one is impliedly limited by the necessity of preserving independence of the States, while the other is not. Accordingly, as application of the statutory provisions now before us might materially restrict respondent's control over its fiscal affairs, the trial court rightly declared them invalid.

If federal bankruptcy laws can be extended to respondent, why not to the State? If voluntary proceedings may be permitted, so may involuntary ones, subject of course to any inhibition of the Eleventh Amendment. *Matter of Quarles*, 158 U. S. 532, 535. If the State were proceeding under a statute like the present one, with

terms broad enough to include her, apparently the problem would not be materially different. Our special concern is with the existence of the power claimed—not merely the immediate outcome of what has already been attempted. And it is of the first importance that due attention be given to the results which might be brought about by the exercise of such a power in the future.

The especial purpose of all bankruptcy legislation is to interfere with the relations between the parties concerned—to change, modify or impair the obligation of their contracts. The statute before us expresses this design in plain terms. It undertakes to extend the supposed power of the Federal Government incident to bankruptcy over any embarrassed district which may apply to the court. See *Perry* v. *United States*, 294 U. S. 330, 353.

If obligations of States or their political subdivisions may be subjected to the interference here attempted, they are no longer free to manage their own affairs; the will of Congress prevails over them; although inhibited, the right to tax might be less sinister. And really the sovereignty of the State, so often declared necessary to the federal system, does not exist. *McCulloch* v. *Maryland*, 4 Wheat. 316, 430. *Farmers Bank* v. *Minnesota*, 232 U. S. 516, 526.

The Constitution was careful to provide that "No State shall pass any Law impairing the Obligation of Contracts." This she may not do under the form of a bankruptcy act or otherwise. *Sturges* v. *Crowninshield*, 4 Wheat. 122, 191. Nor do we think she can accomplish the same end by granting any permission necessary to enable Congress so to do.

Neither consent nor submission by the States can enlarge the powers of Congress; none can exist except those which are granted. *United States* v. *Butler*, decided January 6, 1936, 297 U. S. 1. The sovereignty of the State essential to its proper functioning under the Federal Constitution cannot be surrendered; it cannot be taken away by any form of legislation. See *United States* v. *Constantine*, 296 U. S. 287.

Like any sovereignty, a State may voluntarily consent to be sued; may permit actions against her political subdivisions to enforce their obligations. Such proceedings against these subdivisions have often been entertained in federal courts. But nothing in this tends to support the view that the Federal Government, acting under the bankruptcy clause, may impose its will and impair State powers—pass laws inconsistent with the idea of sovereignty.

The power to regulate commerce is necessarily exclusive in certain fields and, to be successful, must prevail over obstructive regulations by the State. But, as pointed out in *Houston, etc. Ry.* v. *United States*, 234 U. S. 342, 353, "This is not to say that Congress possesses the authority to regulate the internal commerce of a state, as such, but that it does possess the power to foster and protect interstate commerce." No similar situation is before us.

The difficulties arising out of our dual form of government, and the opportunities for differing opinions concerning the relative rights of State and National Governments are many: but for a very long time this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the States or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause. *United States* v. *Butler, supra.*

The challenge to the validity of the statute must be sustained. The judgment of the Circuit Court of Appeals is reversed. The cause will be returned to the District Court for further action, consistent with this opinion.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 859.—October Term, 1935.

C. L. Ashton, et al., Petitioners,
vs.
Cameron County Water Improvement District No. One.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[May 25, 1936.]

Mr. Justice Cardozo, dissenting.

The question is a narrow one: Is there power in the Congress under the Constitution of the United States to permit local governmental units generally, and irrigation or water improvement districts in particular, to become voluntary bankrupts with the consent of their respective states?

Cameron County Water Improvement District Number One is a public corporation created by the laws of Texas. It has issued bonds for the construction of a canal system, which bonds are outstanding in the amount of $802,000. Default has been suffered to the extent of $147,000, either for principal or for interest, upon its obligations now matured. But its own indebtedness is only a part of the financial burden that oppresses it. The bonded debt of other municipalities is a superior lien upon the property in the District for $10,386,000, and accumulated interest. The population is mainly agricultural. The farmers have been unable by reason of the great depression to make a living from their farms, and unable to pay their taxes in appreciable amounts. The District has made diligent effort to enforce collections, but without success. When it has attempted to foreclose its liens, it has been compelled for lack of bidders to buy the lands in and pay the court costs. After buying the lands in, it has been unable to get rid of them, for they have been subject to other tax liens prior to its own. The defaults are steadily mounting. For the year 1932, they were 63%; for the year 1933, 88.9%. The average market value of lands in the District does not exceed $75 per acre; and the total bonded debt per acre, principal and interest, is approximately $100. In these circumstances little good can come of levying more taxes to pyra-

mid the existing structure. The remedies of bondholders are nominal, not real.

What is true of Cameron County Water Improvement District Number One is true in essentials of thousands of other public corporations in widely scattered areas. The hearings by committees of the Congress before the passage of the statute exhibit in vivid fashion the breadth and depth of the mischief which the statute was designed to remedy.[1] In January, 1934, 2019 municipalities, counties and other governmental units were known to be in default.[2] On the list, which was incomplete, were large cities as well as tiny districts. Many regions were included: 41 out of 48 states. Students of government have estimated that on January 1, 1933, out of securities to the extent of $14,000,000,000 issued by units smaller than the states, a billion were in default.[3] The plight of the debtors was bad enough; that of the creditors was even worse. It is possible that in some instances the bonds did not charge the municipalities or other units with personal liability. Even when they did, however, execution could not issue against the property of the debtor held for public uses,[4] and few of the debtors were the owners of anything else. In such circumstances the only remedy was a mandamus whereby the debtor was commanded to tax and tax again. *Rees* v. *City of Watertown,* 19 Wall. 107; *Merriwether* v. *Garrett,* 102 U. S. 472, 501.[5] The command was mere futility when tax values were exhausted. Often the holders of the bonds to the extent of ninety per cent or more were ready to scale down the obligations and put the debtor on its feet. A recalcitrant minority had capacity to block the plan. Nor was there hope for relief from statutes to be enacted by the states. The Constitution prohibits the states from passing any law that will impair the obligation of existing contracts, and a state insolvency act is of no avail as to obligations of the debtor incurred before its passage. *Sturges* v. *Crowninshield,* 4 Wheat. 122. Relief must come from Congress if it is to come from any one.

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[1] See Hearings before a Subcommittee of the Senate Committee on the Judiciary on S. 1868 and H. R. 5950, 1934, 73rd Cong., 2nd Sess.; Hearings before the House Committee on the Judiciary on H. R. 1670, etc., 1933, 73rd Cong., 1st Sess.

[2] See Senate Committee Hearings, *supra,* at p. 12.

[3] See the statistics gathered in 46 Harvard Law Review 1317.

[4] For a collection of the cases, see 3 McQuillin, Municipal Corporations, 2nd ed., § 1262.

[5] The cases are collected in 33 Columbia Law Review 28, 44.

The next step in the inquiry has to do with the power of the Congress to eradicate the mischief. Is the Act in question, adopted May 24, 1934, to continue for two years (§§ 78, 79 and 80 of the Bankruptcy Act of 1898, as amended by 48 Stat. 798; 11 U. S. C. §§ 301, 302, 303), and now extended to January 1, 1940 (P. L. 507, approved April 10, 1936), a law "on the subject of Bankruptcies" within Article I, Section VIII, Clause 4 of the Constitution of the United States? Recent opinions of this court have traced the origin and growth of the bankruptcy power. *Continental Illinois National Bank* v. *Chicago, Rock Island & Pacific Ry. Co.*, 294 U. S. 648, 668; *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, 588. The history is one of an expanding concept. It is, however, an expanding concept that has had to fight its way. *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 184; Charles Warren, Bankruptcy in United States History (1935), p. 9. Almost every change has been hotly denounced in its beginnings as a usurpation of power. Only time or judicial decision has had capacity to silence opposition. At the adoption of the Constitution the English and Colonial bankruptcy laws were limited to traders and to involuntary proceedings. An Act of Congress passed in 1800 added bankers, brokers, factors and underwriters. Doubt was expressed as to the validity of the extension (*Adams* v. *Storey*, 1 Paine 79, 82), which established itself, however, with the passing of the years. *Hanover National Bank* v. *Moyses, supra.* Other classes were brought in later, through the bankruptcy Act of 1841 and its successors, "until now practically all classes of persons and corporations are included." *Continental Illinois National Bank* v. *Chicago, Rock Island & Pacific Ry. Co., supra*, at p. 670. For nearly a century, voluntary proceedings have been permitted at the instance of the debtor as well as involuntary proceedings on the petition of creditors. The amendment, however, was resisted. The debates in Congress bear witness to the intensity of the feeling aroused by its proposal. Warren, *op. cit. supra*, at p. 72 *et seq.* For more than sixty years, the debtor has been able to compel a minority of his creditors to accept a composition if the terms have been approved by a designated majority as well as by the judge. This change like the others had to meet a torm of criticism in Congress and the courts. Warren, *op. cit. supra*, at pp. 44, 45, 118-120; *In re Klein*, reported in a note to *Nelson* v. *Carland*, 1 How. 265, 277; *Louisville Joint Stock Land Bank* v. *Radford*, *supra.*

Since the enactment of § 77 in March, 1933 (47 Stat. 1474; 11 U. S. C. § 205), a court of bankruptcy has been empowered to reorganize railroad corporations unable to pay their debts as they mature (*Continental Illinois National Bank* v. *Chicago, Rock Island & Pacific Ry. Co., supra*), and since the enactment of § 77 B in June, 1934 (48 Stat. 912; 11 U. S. C. § 207), a like jurisdiction has existed in respect of business corporations generally. The Act for the relief of local governmental units is a stage in an evolutionary process which is likely to be misconceived unless regarded as a whole.[6]

Throughout that evolutionary process, the court has hewn a straight path.[7] Disclaiming a willingness to bind itself by a cramping definition, it has been able none the less to indicate with clearness the main lines of its approach. In substance, it agrees with Cowen, J., who wrote: "I read the constitution thus: 'Congress shall have power to establish uniform laws on the subject of any person's general inability to pay his debts throughout the United States'" (*Kunzler* v. *Kohaus*, 5 Hill 317, 321), and with Blatchford, J., writing in the Matter of Reiman, Fed. Cas. No. 11,673, p. 496, that the subject of bankruptcy cannot properly be defined as "anything less than the subject of the relations between an insolvent or nonpaying . . . debtor, and his creditors, extending to his and their relief." See *Hanover National Bank* v. *Moyses, supra; Continental Illinois National Bank* v. *Chicago, Rock Island & Pacific Ry. Co., supra; Louisville Joint Stock Land Bank* v. *Radford, supra.* Such was Story's view also. "A law on the subject of bankruptcies in the sense of the Constitution is a law making

[6] Warren, Bankruptcy in United States History (1935), p. 9: "The trail [of the bankruptcy clause] is strewn with a host of unsuccessful objections based on constitutional grounds against the enactment of various provisions, all of which are now regarded as perfectly orthodox features of a bankruptcy law. Thus, it was at first contended that, constitutionally, such a law must be confined to the lines of the English statute; next, that it could not discharge prior contracts; next, that a purely voluntary law would be non-uniform and therefore unconstitutional; next, that any voluntary bankruptcy was unconstitutional; next, that there could be no discharge of debts of any class except traders; next, that a bankruptcy law could not apply to corporations; next, that allowance of State exemptions of property would make a bankruptcy law non-uniform; next, that any composition was unconstitutional; next, that there could be no composition without an adjudication in bankruptcy; next, that there could be no sale of mortgaged property free from the mortgage. All these objections, so hotly and frequently asserted from period to period, were overcome either by public opinion or by the Court."

[7] The Emergency Farm Mortgage Act of 1933 was condemned in Louisville Joint Stock Land Bank *v.* Radford, *supra*, because destructive of rights of property protected by the Fifth Amendment.

provision for persons failing to pay their debts." Story, Commentaries on the Constitution, § 1113, n. 3; cf. Warren, *op. cit. supra,* at p. 68. It is not necessary that the debtor have any property to surrender. One may resort to a court of bankruptcy though one has used up all one's property or though what is left is exempt. *Vulcan Sheet Metal Co.* v. *North Platte Valley Irrigation Co.,* 220 Fed. 106, 108; *In re Hirsch,* 97 Fed. 571, 573; *In re J. M. Ceballos & Co.,* 161 Fed. 445, 450. It is enough that in an omnibus proceeding between a nonpaying debtor on the one side and the creditors on the other, the debtor-creditor relation is to be readjusted or extinguished. Cf. Warren, *op. cit. supra,* at pp. 8, 144.

Cameron Water Improvement District Number One has no assets to surrender. If it shall turn out hereafter that there are any not exempt, the creditors may have them. Cameron Water Improvement District Number One is a debtor in an amount beyond its capacity for payment, and has creditors, the holders of its bonds, who are persuaded that a reduction of the debt will redound to their advantage. Thirty per cent of the creditors had signified their approval of a proposed plan of composition before the filing of the petition, and 66⅔ per cent must give approval before the judge can act.[8] Even then the plan will count for nothing unless the judge upon inquiry shall hold it fair and good. A situation such as this would call very clearly for the exercise by a court of bankruptcy of its distinctive jurisdiction if the debtor were a natural person or a private corporation. Is there anything in the position of a governmental unit that exacts a different conclusion?

The question is not here whether the statute would be valid if it made provision for involuntary bankruptcy, dispensing with the consent of the state and with that of the bankrupt subdivision. For present purposes one may assume that there would be in such conditions a dislocation of that balance between the powers of the states and the powers of the central government which is essential to our federal system. Cf. *Hopkins Federal Savings & Loan Association* v. *Cleary,* 296 U. S. 315; *United States* v. *California,* 297 U. S. 175. To read into the bankruptcy clause an exception or proviso to the effect that there shall be no disturbance of the federal framework by any bankruptcy proceeding is to do no more than has been done already with reference to the power

[8] For taxing districts other than drainage, irrigation, reclamation and levee districts, the requisite percentages are 51% and 75% respectively.

of taxation by decisions known of all men. *McCulloch* v. *Maryland*, 4 Wheat. 316. The statute now in question does not dislocate the balance. It has been framed with sedulous regard to the structure of the federal system. The governmental units of the state may not act under this statute except through the medium of a voluntary petition which will evince their own consent, their own submission to the judicial power. Even that, however, is not enough. By subdivision (k), which is quoted in the margin,[9] the petition must be accompanied by the written approval of the state, whenever such consent is necessary by virtue of the local law. There is still another safeguard. By subdivision (e) (6), the composition, though approved by the requisite majority, shall not be confirmed by the judge unless he is satisfied that "the taxing district is authorized by law, upon confirmation of the plan, to take all action necessary to carry out the plan." To cap the protective structure, Texas has a statute whereby all municipalities, political subdivisions and taxing districts in the state are empowered to proceed under the challenged Act of Congress, and to do anything appropriate to take advantage of its provisions. This statute became a law on April 27, 1935 (Texas, Laws 1935, c. 107), after the dismissal of the proceeding in the District Court, but before the reversal of that decision by the Court of Appeals. Being law at that time it was to be considered and applied. *United States* v. *Schooner Peggy*, 1 Cranch 103, 110; *Danforth* v. *Groton Water Co.*, 178 Mass. 472, 475, 476; *Robinson* v. *Robins Dry Dock & Repair Co.*, 238 N. Y. 271, 281. There are like statutes in other states. Arizona, Laws 1935, c. 17; California, Laws (Extra Session) 1934, c. 4; Florida, Laws 1933, c. 15878; Ohio, Laws (2nd Special Session) 1934, No. 77. In Texas, at all events, it is clear to the point of demonstration, that the filing of a voluntary petition by a political

[9] "(k) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any political subdivision thereof in the exercise of its political or governmental powers, including expenditures therefor, and including the power to require the approval by any governmental agency of the State of the filing of any petition hereunder and of any plan of readjustment, and whenever there shall exist or shall hereafter be created under the law of any State any agency of such State authorized to exercise supervision or control over the fiscal affairs of all or any political subdivisions thereof, and whenever such agency has assumed such supervision or control over any political subdivision, then no petition of such political subdivision may be received hereunder unless accompanied by the written approval of such agency, and no plan of readjustment shall be put into temporary effect or finally confirmed without the written approval of such agency of such plans."

subdivision does not violate the local law or any local public policy. Petitioners are not the champions of any rights except their own. *Pabst-Brewing Sales Co.* v. *Grosscup*, May 18, 1936, — U. S. —; *Hatch* v. *Reardon*, 204 U. S. 152, 160, 161.

To overcome an Act of Congress invalidity must be proved beyond a reasonable doubt. *Ogden* v. *Saunders*, 12 Wheat. 213, 270; *The Sinking Fund Cases*, 99 U. S. 700, 718. Sufficient reasons do not appear for excluding political subdivisions from the bankruptcy jurisdiction if the jurisdiction is so exerted as to maintain the equilibrium between state and national power. Persuasive analogies tell us that consent will preserve a balance threatened with derangement. A state may not tax the instrumentalities of the central government. It may do so, however, if the central government consents. *Baltimore National Bank* v. *State Tax Commission of Maryland*, 297 U. S. 209. Reciprocally, the central government, consent being given, may lay a tax upon the states. Cf. *United States* v. *California, supra.* So also, interference by a state with interstate or foreign commerce may be lawful or unlawful as consent is granted or withheld. *In re Rahrer*, 140 U. S. 545; *James Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311; *Whitfield* v. *Ohio*, March 2, 1936, — U. S. —. The prevailing opinion tells us in summing up its conclusions that the bankruptcy power and the taxing power are subject to like limitations when the interests of a state are affected by their action. Let that test be applied, and the Act must be upheld, for jurisdiction is withdrawn if the state does not approve.

Reasons of practical convenience conspire to the same conclusion. If voluntary bankruptcies are anathema for governmental units, municipalities and creditors have been caught in a vise from which it is impossible to let them out. Experience makes it certain that generally there will be at least a small minority of creditors who will resist a composition, however fair and reasonable, if the law does not subject them to a pressure to obey the general will. This is the impasse from which the statute gives relief. "The controlling purpose of the bill is to provide a forum where distressed cities, counties and minor political subdivisions, designated in the bill as 'taxing districts', of their own volition, free from all coercion, may meet with their creditors under the necessary judicial control and assistance in an effort to effect an adjustment of their financial matters upon a plan deemed mutually advantageous. If a plan is

agreed upon by the taxing district and its creditors holding two-thirds [in some instances three-fourths] in amount of the claims of each class of indebtedness, and if the court is satisfied that the plan is workable and equitable, it may confirm the plan, and the minority creditors are bound thereby." Report No. 207, House Judiciary Committee, June 7, 1933. To hold that this purpose must be thwarted by the courts because of a supposed affront to the dignity of a state, though the state disclaims the affront and is doing all it can to keep the law alive, is to make dignity a doubtful blessing. Not by arguments so divorced from the realities of life has the bankruptcy power been brought to the present state of its development during the century and a half of our national existence.

The Act does not authorize the states to impair through their own laws the obligation of existing contracts. Any interference by the states is remote and indirect. Cf. *In re Imperial Irrigation District*, 10 F. Supp. 832, 841. At most what they do is to waive a personal privilege that they would be at liberty to claim. Cf. *Gunter* v. *Atlantic Coast Line R. Co.*, 200 U. S. 273, 284. If contracts are impaired, the tie is cut or loosened through the action of the court of bankruptcy approving a plan of composition under the authority of federal law. There, and not beyond in an ascending train of antecedents, is the cause of the impairment to which the law will have regard. Cf. *Howard Fire Insurance Co.* v. *Norwich & New York Transportation Co.*, 12 Wall. 194, 199; *Southern Pacific Co.* v. *Darnell-Taenzer Co.*, 245 U. S. 531, 533. Impairment by the central government through laws concerning bankruptcies is not forbidden by the Constitution. Impairment is not forbidden unless effected by the states themselves. No change in obligation results from the filing of a petition by one seeking a discharge, whether a public or a private corporation invokes the jurisdiction. The court, not the petitioner, is the efficient cause of the release.

The Act is not lacking in uniformity because applicable only to such public corporations as have the requisite capacity under the law of the place of their creation. *Hanover National Bank* v. *Moyses, supra*, at p. 190. *Stellwagen* v. *Clum*, 245 U. S. 605, 613. Capacity existing, the rule is uniform for all. *Ibid.*

No question is before us now, and no opinion is intimated, as to the power of Congress to enlarge the privilege of bankruptcy by extending it to the states as well as to the local units. Even if the

power exists, there has been no attempt to exercise it. There is room at least for argument that within the meaning of the Constitution the bankruptcy concept does not embrace the states themselves. In the public law of the United States a state is a sovereign or at least a quasi-sovereign. Not so, a local governmental unit, though the state may have invested it with governmental power. Such a governmental unit may be brought into court against its will without violating the Eleventh Amendment. *County of Lincoln* v. *Luning*, 133 U. S. 529; *Hopkins* v. *Clemson College*, 221 U. S. 636, 645. It may be subjected to mandamus or to equitable remedies. See, e. g., *Norris* v. *Montezuma Valley Irrigation District*, 248 Fed. 369, 372; *Tyler County* v. *Town*, 23 F. (2d) 371, 373. "Neither public corporations nor political subdivisions are clothed with that immunity from suit which belongs to the State alone by virtue of its sovereignty." *Hopkins* v. *Clemson College*, *supra*.

No question as to the merits of any plan of composition is before us at this time. *Abrams* v. *Van Schaick*, 293 U. S. 188. Attention, however, may be directed to the fact that by the terms of the statute (subdivision e (11)), the judge "shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the taxing district, or (b) any of the property or revenues of the taxing district necessary in the opinion of the judge for essential governmental purposes, or (c) any income-producing property, unless the plan of readjustment so provides", and that "the taxing district shall be heard on all questions." These restrictions upon remedies do not take from the statute its quality as one affecting the "subject of Bankruptcies", which, as already pointed out, includes a readjustment of the terms of the debtor-creditor relation, though there are no assets to be distributed. On the other hand, the restrictions are important as indicating the care with which the governmental powers of the state and its subdivisions are maintained inviolate.

The statute is constitutional, and the decree should be affirmed.

The CHIEF Justice, Mr. Justice Brandeis and Mr. Justice STONE join in this opinion.